The Solicitors' Journal

Vol. 98 November 13, 1954 No. 46

CURRENT TOPICS

Limiting Emergency Legislation

A WHITE PAPER entitled "Continuance of Emergency Legislation" (Cmd. 9309, H.M. Stationery Office, 4d.), laid before Parliament on 5th November, states that reductions in 1954 in emergency legislation represent "a steady application" of the policy of lessening reliance on such powers, and that ways and means of cutting the limited number of surviving regulations are under examination. It recalls that there were ninety-seven Defence Regulations in force at 27th December, 1953. By 10th December this year twenty-eight of these will have been revoked. The Government have tabled several motions in the House of Commons proposing to continue in force for another year the remaining emergency legislation which, unless continued by Order in Council, would end on 10th December. The first motion proposes that the Supplies and Services (Transitional Powers) Act, 1945, should be continued for another year. The main effect of this will be to keep in force certain Defence Regulations, including those relating to the entry upon and inspection of land and the price control of goods and services. The second motion proposes the continuance of certain Defence Regulations under the Emergency Laws Acts of 1946 and 1947, including those relating to the use of land by the forces, and a third motion proposes to continue the Agriculture (Miscellaneous War Provisions) Act, 1940, Pts. I and III, and the Sugar Industry Act, 1942. The remaining two motions provide for the continuation of certain temporary provisions as to patents and registered designs.

Findings Keepings ?

Two cases in last week's news exemplify the state of the law as to findings. It seems that whether the finder can retain lost property for himself (and, if so, how much) in the event of the true owner not availing himself of the opportunity which the finder must give him of reclaiming his property depends on where it is found. In a case in which a bus conductor was conditionally discharged at the Thames Magistrates' Court on 4th November, 1954, for not handing in a £1 note found on the bus and given to him by a passenger, the practice of London Transport was stated to be that "neither the finder, if a member of the public, nor the member of the staff concerned, receives any reward." If not claimed within three months the lost property is sold by auction, part of the proceeds going towards the lost property service and part to staff benevolent and welfare funds. Although the equities appear to be equal where property is found in the street, the police return to finders property which is not claimed within one month. The police evidently consider it worth while to reward honesty. The transport undertakings look at the matter from the aspect of the immense quantities of personal property left on their conveyances to be redistributed as part of their service. The other case (*Thomas and Another* v. *Greenslade*, *The Times*, 5th November, 1954) merely emphasises that purchasers of old boxes, desks and other objects that might conceal articles of immensely greater value than the purchase price, do not become owners of any such articles of value unless the contract of sale clearly

CONTENTS

passes the property in the box or desk, etc., with all its contents. *Merry* v. *Green* (1841), 7 M. & W. 623, a case about a desk with a purse of money in a secret drawer, is on all fours with *Thomas* v. *Greenslade*, and the law is not in doubt. With regard to chattels found on the land of another, the authorities, as Birkett, J., said in *Hannah* v. *Peel* [1945] K.B. 509, are unsatisfactory but probably lean towards the landowner. If, however, the public are admitted, the finder is entitled to keep what he has found, as against the owner of the premises, but not as against the true owner of the chattel (*Bridges* v. *Hawkesworth* (1851), 21 L.J.Q.B. 75).

Changes in Chancery Practice

WE print on p. 762 of this issue the text of an important Practice Direction issued by the judges of the Chancery Division in implementation of certain of the recommendations of the Evershed Committee on Supreme Court Practice and Procedure. The new directions materially alter much of the existing procedure in the Chancery Division relating to *ex parte* applications, office copies of affidavits, and the redemption and foreclosure of mortgaged property, and are already operative.

End of Building Licensing

THE MINISTER OF WORKS announced on 2nd November in the Commons that the Government had decided, in view of improved supplies of building materials and higher productivity in the building industry, to end building licensing. An Order in Council to revoke Defence Regulation 56A was accordingly to be laid before Parliament on 10th November.

Disposal of Land by Local Authorities: Minister's Consent

MINISTRY of Housing and Local Government circular 70/54, issued on 29th October, 1954, states in connection with the granting of the Minister's consent to the disposal by local authorities of land which they own, where statutory provisions require that his consent to disposal should be given, that he has decided to introduce some simplifications of the machinery. Under (i) s. 19 of the Town and Country Planning Act, 1944 (which governs the disposal of land held for the purposes of ss. 38 and 40 of the Town and Country Planning Act, 1947), and (ii) s. 104 of the National Parks and Access to the Countryside Act, 1949, every disposal, however unimportant, or for however short a period, requires the Minister's consent. It has been decided to give to all authorities holding land for these purposes a general consent, subject to conditions, to disposals by way of lease or letting for a term not exceeding seven years, as being the maximum that would be unlikely to affect the Minister's commitment for grant, where this may be payable. The general consent will, in cases falling under (i) above, permit an authority to make such allowance under s. 19 (6) of the 1944 Act as they think proper where the tenancy granted terminates or is determinable within one year, but in other cases, where the authority propose to make such an allowance, application for consent to dispose should be made in the ordinary way. The circular sets out the form of general consent. Experience has shown that consents to a class of disposal identified otherwise than by the length of the term are not satisfactory for central areas and towns, where, in particular, commercial values and the sizes and shapes of plots vary widely within very short distances, and difficult questions of reinstatement may have to be considered under s. 19 (6). With regard to land held under the Housing Acts, the Minister will not in future ask local authorities to submit certified copies of resolutions authorising applications to the Minister for consent to disposal, and to give consent by instrument under seal. Applications for consent may be made in the form in the appendix to the circular; or by letter giving the same information as is looked for in the appendix. Circular 64/52, containing a general consent to the disposal of houses, is not affected. In the case of disposals of land (including appropriations and exchanges) for which the Minister's consent is required under Pt. VI of the Local Government Act, 1933, Pt. V of the London Government Act, 1939, or corresponding provisions in local Acts, the department will no longer require a copy of the council's resolution authorising the application for consent, provided that a formal application is made on behalf of the authority.

The Funeral of a Statute

IT is fitting that the *Law Quarterly Review*, from its unique position among English legal institutions, should speak the funeral oration over the Statute of Frauds, 1677, repealed on 4th June, 1954, by the Law Reform (Enforcement of Contracts) Act, 1954, except as to promises to answer for the debt, default or miscarriage of another. The *Quarterly's* own claim to a place as one of the honorary pall-bearers is a little modest, because, as is recorded in the first note in the October, 1954, issue (vol. 70, No. 280), the first article in vol. 1 in 1885 was an attack by Mr. Justice Stephen and Mr. Frederick Pollock on s. 17 of the Statute of Frauds, re-enacted in s. 4 of the Sale of Goods Act, 1893. On the 250th anniversary of the Statute in 1927 the *Quarterly* suggested that the toast of the day should be *floreat injustitia*. The *Quarterly* rightly sets off against these attacks on the deceased the fact that the text-book writers and teachers will have to forgo well-loved subjects such as the subtle distinctions between a sale of goods and a contract for work and what constitutes performance within a year. The last of "a long and distinguished line" of cases is how the *Quarterly* describes *Craxfords (Ramsgate), Ltd.* v. *Williams and Steer Manufacturing Co., Ltd.* [1954] 1 W.L.R. 1130; *ante*, p. 576, which decided that a defence pleading s. 4 of the Sale of Goods Act, 1893, delivered before the repealing Act came into force, was ineffective in a hearing of the case after the operative date. Paraphrasing Mr. T. S. ELIOT, the *Quarterly* misquotes: "This is the way the Statute ends. Not with a bang, but a whimper."

A Unique Presentation

SIR WINSTON CHURCHILL'S eightieth birthday, which falls on 30th November, presents a unique opportunity for making known to the Prime Minister the esteem and affection in which he is held throughout the world, and the nation's gratitude for his long and distinguished service. A Winston Churchill Eightieth Birthday Presentation Fund has been launched for this purpose under the distinguished patronage of the nation's leaders in the religious, political, artistic and all other spheres. The honorary treasurer is Lord Moynihan. The presentation will be accompanied by a specially printed register of contributors which will give the names of all subscribers. In the case of personal donations, no amounts will be given, but for corporate donations the name and amount will be included in a separate section. Copies of the register of contributors will be available in public libraries for inspection after the fund is closed. When the fund was launched, the Prime Minister promised that he would give the organisers his opinion of the form the presentation should take, and it was believed that he would favour some national or international social or humane endowment which would be of lasting service. Most contributors up to now have expressed the view that the present should be something personal.

A Conveyancer's Diary

ULTIMATE TRUSTS

THE result of the settlor's dispositions in *Re Burton's Settlement Trusts* [1954] 3 W.L.R. 574; p. 734, *ante* (which was a distinct case from that of *Re Burton's Settlements*, of which I wrote last week, although reported simultaneously with it), is something which it is generally desirable to avoid nowadays, and the circumstances which produced it are worth some investigation. The main point concerned the application of the rule in *Lassence* v. *Tierney* (1849), 1 Mac. & G. 551, to the accruer clause. The settlement was a personalty settlement by which the trustees were directed to stand possessed of a trust fund and the income thereof upon trust to divide it, or without actual division to treat the same as divided, into two equal parts, and to appropriate one of such parts as the share of each of two daughters of the settlor, *A* and *I*. The settlement then went on to provide that the share of each of the daughters should not vest absolutely in such daughter but should be retained upon certain trusts for the benefit of that daughter and her issue, in a form usual for such limitations. As it happened, both the daughters died without ever having been married. On the death of *A* in 1927 there was no doubt what happened to the share limited in trust for her during her lifetime; it passed to the other daughter's share under an accruer provision, which provided that if the trusts thereinbefore declared concerning the share of either of the daughters should fail then, in effect, such share should go and accrue by way of addition to the share of the other daughter, and should be held upon the trusts declared concerning that daughter's original share. But on the subsequent death of *I* in 1952 all the trusts expressly declared by the settlement failed, and the question then, broadly speaking, arose whether the trust fund went back to the settlor by way of a resulting trust, or was held for the estate of the survivor of the two daughters, *I*, by virtue of the rule in *Lassence* v. *Tierney*.

That rule has frequently been restated since it was originally formulated, and the restatement of it which Roxburgh, J. (before whom the present case came for decision) selected as most appropriate to the circumstances was from *Attorney-General* v. *Lloyds Bank, Ltd.* [1935] A.C. 382. In the course of his opinion in that case Lord Tomlin said that the result of the application of the rule there would have been that on the construction of the settlement there was an initial absolute gift to the three beneficiaries in equal shares, and that the absolute initial gift of each share was only cut down "if and when and while there is in existence some person qualified to take under the trusts of such share declared in derogation of the absolute gift and to the extent necessary to give effect to the rights of such person." To apply the rule, it is necessary to find an absolute initial gift to the beneficiary in question, absolute in form, that is, because the trusts which are declared concerning the subject matter of the gift make it impossible that it should be absolute in fact. Thus it was argued that the settlement of the two daughters' shares did, on its true construction, constitute an absolute gift initially of a share to each daughter, subjected to trusts subsequently declared. The indications of such an absolute gift were to be found, it was said, first in the direction to divide the fund into two parts and to appropriate one of such parts as the share of each of the daughters, secondly in the direction that the share of each daughter should not vest absolutely in her but be retained upon trust for her benefit, and finally in the provisions of the accruer clause itself.

The decision was that there was no such initial absolute gift as to bring the rule in *Lassence* v. *Tierney* into operation. The directions to divide the fund and to retain the share were carefully examined, and this part of the decision will be of interest as a guide to the construction of similar provisions in the future. But this is familiar ground, and the main interest of the decision lies in that part of it which deals with the relation of this rule to the accruer clause.

As the learned judge pointed out, this is only the second case in the voluminous reported literature on this theme in which an accruer clause has been relevant, the first being the decision of the Court of Appeal in *Re Litt* [1946] Ch. 154. But in that case it was plain that there was an initial trust, absolute in its terms, for the beneficiaries, with super-added directions as to the retention of the shares of some of the beneficiaries upon further trusts which included a provision for the accruer of any share in respect of which there should be a failure of the super-added trusts; in that event, it was provided, the share in question should go and accrue to the others of the beneficiaries living at the time of such failure. There was such a failure in respect of all the shares. On the death of the survivor of the beneficiaries the question arose whether the shares which, during the lifetime of the survivor, had accrued to her share and of which she had enjoyed the income went to her estate absolutely, or went to the respective estates of the beneficiaries to whom those shares had originally been limited. This question involved another, which was the gist of the case. There were in that case two gifts, absolute initially with trusts subsequently engrafted upon them, to which the rule in *Lassence* v. *Tierney* was *prima facie* capable of application: the first was the gift of a share to each of the beneficiaries, with directions for its retainer on certain trusts, which included the accruer provisions; the second was the accruer provision itself in so far as it would operate to confer an interest, absolute initially, on those of the beneficiaries who should be living at the time of the accruer and to whom, under its terms, the accruing share was limited to go. It was suggested that to find two provisions or sets of provisions in the trusts of a single fund to which the rule in *Lassence* v. *Tierney* applied was unusual, and that the court should not, therefore, so construe the language of the will as to produce that result: but the court could find no logical reason why a trust engrafted upon an absolute interest should not, among the trusts so engrafted, include a further absolute interest which was in its turn subject to the trusts of the settlement, and, if that was the true construction of the engrafted trusts, the rule in *Lassence* v. *Tierney* would apply at that stage. In fact, that was the construction which the court put upon the provisions before it, with the result that the rule applied to the shares which had accrued to the surviving beneficiary and after her death those shares passed, in accordance with that rule, absolutely and free from all the engrafted trusts, to her estate.

If in the present case there had been a clear initial gift, absolute in its terms, this decision would doubtless have been conclusive. Apart from anything else, the accruer clause contemplated the blending of the two parts of the fund, and any gift in the accruer clause would have carried the fund as a blended fund. But just as there was the vital difference between the two cases in that the original trust of each share in *Re Litt* had been declared in absolute terms whereas in the present case there was no gift, absolute in its terms, of the

original share of each of the settlors' two daughters, so when it came to the accruer clauses, that in *Re Litt* provided that an accruing share should go and accrue to the surviving beneficiaries, whereas in the present case the accruing share was to go and accrue to the share of the survivor, that is to say, the language of the former clause was perfectly apt to express an absolute gift, but it was impossible so to construe the latter. The accruer clause in the present case was not, therefore, capable of supplying the want of an absolute initial gift of the original shares, which is a prerequisite of an application of the rule in *Lassence* v. *Tierney*.

The upshot in *Re Burton's Settlement Trusts* was that the fund was declared to be held on a resulting trust for the estate of the settlor. It may be thought that for practical purposes there is little difference between the results of the two cases, since in each there was a somewhat unexpected accretion to the estate of a deceased person but as that was accompanied by a failure of the issue of the persons primarily intended to be benefited the ultimate destination of the trust funds was a matter of indifference. That may be so. But there are a surprising number of cases in practice where the failure of family trusts does produce unfortunate consequences, either in the multiplication of charges to estate duty, if the funds devolve through several estates, or in the devolution of the funds to persons related to the settlor by affinity when blood relations (who, it may generally be said, have a prior claim on any benefit which may become available) are in existence. The rule in *Lassence* v. *Tierney* applies only where no express provision is made for the destination of the trust estate or fund in the event of the failure of the trusts declared for the benefit of the beneficiaries whom the settlor primarily desires to benefit, and it is always better to make such express provision than to allow the rule to take charge. Apart from all else, a comparison of *Re Litt* with *Re Burton's Settlement Trusts* shows how fine are the distinctions to which the application of the rule is subject, and how haphazard may be the application of this rule to provisions which are superficially identical.

"A B C"

Landlord and Tenant Notebook

NOTICE TO QUIT "BY . . ."

THE point which the Court of Appeal was called upon to decide in *Eastaugh* v. *Macpherson* [1954] 1 W.L.R. 1307 (C.A.); *ante*, p. 733, was, according to Evershed, M.R., a curious one. The plaintiffs had let a small office or cubicle to the defendant, a medical practitioner, on a yearly tenancy which had commenced on a 1st April and was specially made terminable by three months' notice (either party) expiring at the end of any year of the tenancy. On 23rd December, 1953, they wrote him: "At a recent meeting the Executive Committee reviewed the question of your tenancy of the small office at . . . , which we agreed that you should rent until 31st March, 1954. After some discussion, it was decided that, as we now need the accommodation which you occupy, we have to terminate the arrangement and I must ask you, therefore, to accept three months' notice to vacate the office by the date (i.e., 31st March, 1954). Yours sincerely . . ."

The defence to a claim for possession based on the alleged termination of the tenancy on and with 31st March, 1954, was that the alleged notice purported to cut off the last day of the tenancy and at first instance it was held that it was a bad notice accordingly. Reversing the decision of the county court judge, the court held that the phrase, "by the date (i.e., 31st March, 1954)," must be construed in the light of the letter as a whole. And (i) the first sentence indicated that the tenancy was to continue up to and including 31st March; (ii) the sentence containing the phrase must, accordingly, when it speaks of "vacating the office by . . ." be read as giving notice to determine the tenancy on the date when it was liable to be determined, namely, 31st March; (iii) the writer of the letter was, therefore, saying, in other words: "Accept three months' notice to vacate the office on or before 31st March."

The point may have been curious (as was the apparent misnaming, in the judgment, of the county court judge concerned) in that we have had no reported decisions on the question whether "by" is to be read as including or excluding the time which follows (in England, that is; the court were able to cite *J. H. Munro* v. *Vancouver Properties, Ltd.* [1940] 3 Weekly Western Reports 26 in support of their view). But that question has very frequently been raised in connection with the word "from." One can begin with *Douglas* v. *Shank* (1600), Cro. Eliz. 766, an action for ejectment by a tenant against his landlord in which the plaintiff obtained a verdict only to have judgment arrested on the ground that he had pleaded "*habendum a die datus, virtute eius dimissionis*" and alleged not only possession, but entry by virtue of that demise: an argument that if he had entered on that day he must himself be a disseisor was accepted. To the same effect were *Llewelyn* v. *Williams* (1610), Cro. Jac. 258, and *Bacon* v. *Waller* (1616), 1 Rolle 387 (a replevin action); and even when we had ceased pleading in Latin (it may be that the "*a*" of that language is less elastic than our "from") we find Lord Mansfield stating, in an anonymous case decided in 1773 and reported in Lofft 275: "From the 1st of June, then, is that on 2nd June the tenancy begins" and so upholding a pleading, in an action for double value (miscalled "double rent") (a penal action!) that the three years' tenancy had begun on that day and had terminated on 1st June three years later, the date named in the landlord's notice under the Landlord and Tenant Act, 1730, s. 1.

A few years later, however, in *Pugh* v. *Leeds* (*Duke of*) (1777), 2 Cowp. 714, the same Lord Mansfield decided that "from" might or might not be read so as to include the date named, context and subject-matter being legitimate considerations; the validity of a lease granted under a marriage settlement of a twenty-one year lease depended, in that case, on the court acceding to an argument that the "from" in the habendum was to be read as including "the day of the date," but for which the grant would have been *ultra vires*. The learned Chief Justice gave an exhaustive review of past authorities and emphasised that "from," both in vulgar use and strict propriety, might mean either *inclusive* or *exclusive*; indeed, a hundred or more instances, verse and prose, of both meanings had occurred to him "whilst the gentlemen at the bar were arguing." In *Auckland* v. *Lutley* (1839), 9 A. & E. 879, the judgment containing it was described as admirable. The last-mentioned case arose indirectly out of a lease for twenty-one years "from" 25th March, 1809; at 12 o'clock noon on 25th March, 1830, the reversioners, trustees under the grantor's will, entered and had some trouble with a purchaser; the tenant was indifferent or neutral, but the position in the action (trespass to land and goods) depended on whether the reversioners had had any right to be there, and it was held that they had

not: a term of years lasts during the anniversary of the day *from* which it is granted; and, in this case at all events, one result of the opposite view would be that the last payment of rent (payable on the four usual quarter-days) would not be due till after term expired.

Mention may also be made of *Meggeson* v. *Groves* [1917] 1 Ch. 158; while the actual pronouncement on the subject was, as things happened, made *obiter*, the case does show in what a variety of circumstances the question of "inclusive or exclusive" may be important. There was a ten years' lease of a farm *from* 25th March, 1906; the tenant covenanted to leave all manure arising from the production of the *last year's* farming; he was said to have sold such on 24th March, 1915; Peterson, J., said that, on the authorities, he considered that the tenancy had begun at midnight on 25th March, 1906 (meaning, no doubt, midnight between 25th and 26th March, 1906).

It is said that the decisions cannot be completely reconciled, but I submit that the position that emerges is that *prima facie* "from" excludes the day which follows, but that either other language used in the context, or the knowledge of the person to whom the document is addressed (or, of course, both) may justify construction as inclusive.

In making the notice under discussion in *Eastaugh* v. *Macpherson* an "on or before" notice, the court was impliedly approving an interpretation approved in *Dagger* v. *Shepherd* [1946] K.B. 215. The point is worth noting, for a possible objection to that form (what happens if the recipient, taking the landlord at his word, as it were, quits some time before the date named—is he entitled to have rent apportioned?) has not, I submit, been fully gone into yet. That is to say, Evershed, J. (as he then was), held, after carefully examining such authority as existed, that such a "notice" was (i) a notice to quit plus (ii) *an* offer.

The county court judge in the recent case was said to have misled himself by consulting a dictionary and applying the meaning given to "by" in relation to place, not time, i.e., "at the side of; near to." I would suggest that when he went on to illustrate his conclusion by stating: "If I say 'I hope to have finished my list by 4.30' that must mean 'I hope I won't be sitting one moment after 4.30,'" the real fallacy was confusion of a point with a period. For 31st March, 1954, unlike 4.30, had a beginning and an ending; and the essential issue was whether the tenant was entitled to say that the notice told him to quit at the beginning of the day in question.

R. B.

HERE AND THERE

NOT ALL OF A PIECE

A TYPICAL mid-twentieth century London street is not, if you come to think of it, a street full of the very latest mid-twentieth century architecture. It is a patchwork of all the building fashions of the last couple of hundred years. And so too, in spite of the planners who would have it that in the social order neatness is all, life in England has the same quality of not being all of a piece with the immediate present. Institutions as old as the oldest of our public monuments survive alive and not just as museum pieces. Our roots go down to the Temple of Mithras; it was as if a subconscious realisation of this drew the crowds to its unearthing the other day. Once anything takes hold in English life it shows an astonishing tenacity in survival. Take tithes, for instance, which go back (one supposes) to the immemorial beginnings of Christianity in this island. The whole character of the Church changed in the sixteenth century and tithes went on. Queen Anne took a hand in them. Queen Anne died, but she still lived on in the law of tithes. The utilitarian nineteenth century decided that they were a nuisance. It began to nibble at them. It invented "corn rents" for those who preferred to translate their liabilities into terms of the fluctuating price of corn. Various Acts of Parliament tinkered with them. Farmers began to lose their tempers about them in the period between the two world wars. There were organised demonstrations and recalcitrant refusals to pay and the martyrdom of distresses. Then (can one say it or is it an over-simplification?) in 1936 tithes were in effect nationalised, with the general design of their ultimate extinction in 1996, which will see most of us out of this world, comfortably or uncomfortably. Those who are best qualified to speak believe that the bulk of the business will be cleared up by then, but not apparently, the corn rents. Meanwhile the heart of this astonishing historical survival beats quietly and unobtrusively in a large, bare, modern, rather dreary office block in a City square. Nobody knows anything at all about so esoteric a branch of the law save the initiated who administer it cosily and happily. If the demands of the Tithe Commission were as heavy as those of the Inland Revenue a flourishing tithe Bar would be making an enormous fortune in the Temple. But as they have little more than a nuisance value at county court level, nobody bothers very much about fighting them and this outpost of government is fairly easy to hold.

MONEY FOR MANORS

MUCH the same sort of tenacity of survival has been displayed by the institution of the manor, once the basis of rural life in England and perhaps going back (as some would have it) to the Roman villa. With the strange indirect transforming and transmuting way in which things do survive here, who can say that it is impossible? Nothing was impossible where manorial law was concerned, mingling land tenure, military service, feudal rights and local government with play acting and practical joking. The manor of Shorn in Kent was held by the tenure of carrying a white ensign for forty days when the King should make war in Scotland. The manor of Bloomsbury was held of the Crown by rent of a sparrowhawk. The shepherds of the manor of Hutton Conyers did fealty "by bringing to the court a large apple pie and a twopenny sweet cake." The lord of the manor of Shrivensham was bound, whenever the King passed over a certain bridge, to present himself there with two white capons and to say in Latin: "Behold, my Lord, these two white capons which you shall have another time but not now." That the manors should have survived as anything but a memory is one of the strangest things about this country. But that they have survived is well and indisputably established by the fact that this very month at Holborn Hall twenty-seven people paid £9,700 for the right to the title of lord or lady of the manor, a title carrying no houses, no land and at most in solid profit a few shillings revenue derived from rights of common. The purchasers ranged from the chairman of an enormously wealthy banking concern, who bought the manor of Haughley in Suffolk for £350, to the landlord of the Rose Inn at Stoke by Nayland who put down £270 for the manor of Akenham.

FAR-FLUNG LORDSHIPS

LORDSHIPS of the manor turn up in the most unexpected places. Mr. John Farrow, the Hollywood film director and husband of Miss Maureen O'Sullivan, is lord of the

manor of Surlingham in Norfolk. He was born in Australia but has an East Anglian ancestry and a coat of arms. The rights of a lord of the manor may be shadowy and hypothetical but the hypotheses may sometimes translate themselves into solid reality in terms of mineral rights, sporting rights, grazing rights. Quite recently the parish council of Finchingfield was searching desperately for its missing lord of the manor. Owing to the encroachment of motorists, their village green has been eroded until it is in danger of vanishing altogether. Only the lord of the manor can intervene and no one knows who he is. Since there are people who collect manorial rights like postage stamps, ownership may often become extremely difficult to trace if the album (so to speak) is inherited by unappreciative heirs. One hopes that the banker, the publican, the famous bookseller, the farmer, the teacher's wife who bought that last collection of manors this month give their duties and their dignities the weighty personal consideration that they deserve. RICHARD ROE.

PRACTICE DIRECTION

CHANCERY DIVISION

With a view to carrying out certain recommendations of the Committee on Supreme Court Practice and Procedure, the judges of the Chancery Division have directed as follows:—

1. EX PARTE APPLICATIONS

Where, by any rule or practice, Orders or Directions may be sought in Chambers *ex parte* supported by Affidavit, it shall not be necessary to issue a summons for such purpose unless required by the rule under which the application is made or the judge shall otherwise direct.

Examples:

(1) Garnishee Order *nisi*.
(2) Change of parties upon devolution of interest.
(3) Appointment of next friend or guardian-ad-litem of an infant or person under disability in the stead of such a person who has died.
(4) Substituted service of writ and other process.

2. OFFICE COPIES OF AFFIDAVITS

Unless the court or a judge in any particular instance shall otherwise direct, it shall not be necessary to bespeak for the use of the court or judge office copies of affidavits intended to be filed in connection with interlocutory or procedural matters as distinct from affidavits forming part of the evidence in a suit or dealing with the merits of the case; as to which latter the existing practice shall continue.

Examples where office copies will NOT usually be required:—

(1) Of fitness to act as receiver, manager, next friend or guardian-ad-litem or guardian of an infant.
(2) Verifying the security of a surety of a receiver's, manager's or guardian's account.
(3) Proving service of process (including notices to prove a claim or the allowance thereof).
(4) In support of applications under Orders VII, r. 4; XIV; XVIII, r. 2; XXXI, r. 19A (3) and LVII, etc.

NOTE.—A more extensive list can be inspected in the Masters' Summons Rooms.

3. REDEMPTION AND FORECLOSURE OF MORTGAGED PROPERTY

(1) All Orders *nisi* for redemption or foreclosure of mortgaged property shall provide that unless the mortgagor or other the person who is required to pay the redemption money shall, at least seven days prior to the date fixed for redemption by the order or the master's certificate pursuant thereto, give to the mortgagee's solicitor a written notice of his intention to redeem at the appointed time and place, attendance made for the purpose of redemption at the appointed time and place shall be treated as a notice of intention to attend at the same place and time on the corresponding day of the week then following and the period allowed for redemption shall be treated as enlarged accordingly.

(2) The master's certificate pursuant to an order *nisi* (or the order itself if thereby a certificate is avoided) shall nominate as the place of redemption the office of the mortgagee's solicitors if it be within five miles of the Royal Courts of Justice, Strand, or such other place as may be agreed between the parties and recorded in the order or certificate. In all other cases the place for redemption shall be recorded as Room 138 of the Royal Courts of Justice, Strand, W.C.2.

M. G. WILLMOTT,
Chief Master.

3rd November, 1954.

BOOKS RECEIVED

Underhill's Law Relating to Trusts and Trustees. Fourth Cumulative Supplement to the Tenth Edition. To 1st September, 1954. By M. M. WELLS, M.A., of Gray's Inn, Barrister-at-Law. pp. xviii and 34. London: Butterworth and Co. (Publishers), Ltd. 6s. net.

Butterworth's Costs. Third Cumulative Supplement. Edited by B. P. TREAGUS, Principal Clerk, Supreme Court Taxing Office, and H. J. C. RAINBIRD, of the Supreme Court Taxing Office. Including a Section on Quarter Sessions by ALFRED SWIFT, Deputy Clerk of the Peace, County of London Quarter Sessions. 1954. pp. xxii and 268. London: Butterworth and Co. (Publishers), Ltd. 17s. 6d. net.

The Lawyer's Remembrancer and Pocket Book. By ARTHUR POWELL, K.C. Revised and edited for 1955 by J. W. WHITLOCK, M.A., LL.B., assisted by S. H. W. PARTRIDGE, M.A. 1954. pp. 351 and Diary. London: Butterworth and Co. (Publishers), Ltd. 13s. 6d. net.

Learning the Law. Fifth Edition. By GLANVILLE WILLIAMS, LL.D. (Cantab.), of the Middle Temple, Barrister-at-Law. 1954. pp. ix and (with Index) 216. London: Stevens and Sons, Ltd. 12s. 6d. net.

Spicer and Pegler's Income Tax and Profits Tax. Twenty-first Edition. By H. A. R. J. WILSON, F.C.A., F.S.A.A. 1954. pp. xxxviii and (with Index) 685. London: H. F. L. (Publishers), Ltd. £1 10s. net.

Road Traffic Law. By Chief Inspector J. L. THOMAS (City of Bradford Police). 1954. pp. (with Index) 134. London: Police Review Publishing Co., Ltd. 3s., post free.

Oke's Magisterial Formulist. Supplementary Volume No. 1 and Second (Cumulative) Noter-up to the Fourteenth Edition. By J. P. WILSON, Solicitor, Clerk to the Justices for the County Borough of Sunderland. 1954. pp. (Supplementary Volume) viii, 146 and (Index) 19; and (Noter-up) xi and 48. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. £1 12s. 6d. net.

Shares of No Par Value. The Departmental Committee's Report. By W. T. BAXTER, Professor of Accounting, London School of Economics, and L. C. B. GOWER, Professor of Commercial Law, London School of Economics. 1954. pp. 37. London: The Incorporated Accountants' Research Committee. 4s. net.

The Spirit of Liberty. Papers and Addresses of Judge LEARNED HAND. 1954. pp. xxx and 285. London: Hamish Hamilton, Ltd. £1 1s. net.

The Quantum of Damages in Personal Injury Claims. By DAVID A. MCI. KEMP, B.A. (Cantab.), of the Inner Temple and the Wales and Chester Circuit, Barrister-at-Law, and MARGARET SYLVIA KEMP, M.A. (Cantab.), a Solicitor of the Supreme Court. With a Foreword by The Right Honourable Sir NORMAN BIRKETT. 1954. pp. xviii and (with Index) 462. London: Sweet & Maxwell, Ltd. £1 15s. net.

Income Tax: Maintenance Relief and Agricultural Allowances. By F. E. CUTLER JONES, B.A., Chartered Accountant. 1954. pp. xvii and (with Index) 344. London: Sweet & Maxwell, Ltd. £1 15s. net.

REVIEWS

A Companion to the New Law of Landlord and Tenant. By NORMAN C. ABBEY, Legal Associate Member of the Town Planning Institute and Associate of the Institute of Housing. 1954. London: Eyre & Spottiswoode (Publishers), Ltd. £1 8s. net.

This, if one may apply the expression to a legal text-book, is a very readable book. It is designed to cover—and does cover with thoroughness—the changes brought about by both the Housing Repairs and Rents Act, 1954, and the Landlord and Tenant Act, 1954. It is, of course, inevitable that much of the existing law should be stated when carrying out such a design; but the matter has been carefully classified and many readers will welcome an arrangement by which a separate chapter is devoted to, say, sub-letting, and the fates of *Knightsbridge Estates Trust, Ltd.* v. *Deeley* [1950] 2 K.B. 228 and *Cow* v. *Casey* [1949] 1 K.B. 474, the one settled by the Landlord and Tenant Act and the other by the Housing Repairs and Rents Act, are conveniently dealt with in juxtaposition. It is, likewise, useful to find the law relating to the protection of reserve and auxiliary forces, in so far as it affects landlords and tenants, set out in a special chapter. The author's choice of authorities is, perhaps, not always a happy one and is inclined to be erratic; e.g., the Northern Irish decision of a somewhat obvious point in *Apsley* v. *Barr* [1928] N.I. 183, is mentioned, while *Moodie* v. *Hosegood* [1952] A.C. 61 is not referred to; and while such decisions as are cited are named in the index (there is no table of cases) only their dates are given. This, however, is only another way of saying that a readable book must have the defects of its qualities; and the "Companion" can be recommended to anyone who is anxious to master and to appreciate the importance of the changes wrought by the two Acts.

The Landlord and Tenant Act, 1954. By JAMES FOX-ANDREWS, of Gray's Inn, Barrister-at-Law, and VICTOR WATTS, of the Middle Temple, Barrister-at-Law. 1954. London: The Estates Gazette, Ltd. 17s. 6d. net.

The authors regret that the changes effected by this statute and the Housing Repairs and Rents Act, 1954, were not brought about by one consolidating measure, as was recommended; but the fact that they give separate Introductions to the four Parts of the one dealt with shows that they recognise the variety of those changes. The section-by-section examination which follows each introductory chapter has been carried out with great thoroughness, with useful references to any authority which is likely to be invoked by way of elucidation. It may be that we might have liked to have more comment and annotations in the case of Pt. II and less and fewer in that of Pt. I; for the provisions of Pt. II are the more revolutionary, and something might have been said, for instance, about consent to and about acquiescence in breach of prohibition against carrying on business; the authorities show that what amounts to acquiescence may be a delicate question. The reasoning by which some conclusions are reached is sometimes too terse to be convincing: thus, the statement "a term of years certain exceeding one year [s. 26 (1)] therefor [*sic*] means a term of at least two years" (p. 83), calls for rather more support than has been vouchsafed, especially when one remembers that writers on the Agricultural Holdings Act, 1948, are not too happy about the effect of the provision for extending a tenancy "for two years or upwards." This, however, does not mean that such statements are not useful to the practitioner, and the brief review of authorities on such questions as "what is goodwill" and "what is an improvement" can be cited as two of the many instances in which valuable help is to be found.

The Law of Road Traffic. By M. R. R. DAVIES, Ph.D. (Cantab.), LL.M. (Leeds), D.P.A. (Lond.), of the Middle Temple, Barrister-at-Law. 1954. London: Shaw & Sons, Ltd. £1 10s. net.

The book which Mr. Davies has written deals with both the civil and criminal law. It begins with useful summaries of the regulations relating to the construction and use of motor vehicles, driving licences and lighting, and some sections of the Road Traffic Act are set out in full. There follow chapters on dangerous and careless driving and driving under the influence of drink, which are useful and adequate summaries of the law and decisions on these important subjects. Part III of the book discusses the rights and liabilities of owners and drivers in contract and tort and Part IV relates to insurance. The former covers such subjects as the sale of cars, some facets of hire-purchase, loss of parked vehicles, registration books and running-down actions, and the latter part deals with the civil and criminal side of car insurance.

Most of the relevant cases, including some from Scotland, seem to have been mentioned, though perhaps one may regret that Mr. Davies does not often discuss his subjects but is content to set out the relevant statute and a summary of the cases. Should there be a second edition, we would suggest also that Mr. Davies should deal with obstruction at greater length and should expand his treatment of the Vehicles (Excise) Act and of disqualifications from driving, as several important cases have not been cited. A remarkable omission in a book on road traffic is that of the cases relating to "using."

The book is printed in clear, bold type and has an adequate index. A great deal of ground is covered and the solicitor with a practice in "running-down" cases will find this a most useful work. It can also be recommended to solicitors who act for motor dealers, to insurance officials and, subject to the reservations made above, to solicitors who appear in magistrates' courts.

Income Tax Law and Practice. Twenty-sixth Edition. By CECIL A. NEWPORT, F.A.C.C.A., Fellow of the Institute of Taxation, and H. G. S. PLUNKETT, Barrister-at-Law (formerly one of H.M. Inspectors of Taxes). 1954. London: Sweet and Maxwell, Ltd. £1 7s. 6d. net.

The twenty-fifth edition of this, by now annual, volume was reviewed last year at 97 SOL. J. 727, and in general your reviewer can but repeat that it is, in his view, the most useful of the shorter books on income tax. The present edition is about thirty-five pages longer than its predecessor, partly because it deals with the new elaborations and complications of the Finance Act, 1954, and partly because it has been reset in a more attractive type.

The text is now divided into numbered paragraphs and the index references are to those paragraphs. Some readers like this and some do not: your reviewer is in the latter category but must agree that if it must be done it has, in this case, been well done.

There are just short of 200 arithmetical examples which are most useful, particularly to those not very familiar with the subject and this edition can, like its predecessors, be recommended.

Straws In My Wig. By RICHARD ROE, with drawings by ROBIN HARDY. 1954. London: The Solicitors' Journal. 12s. net.

"Straws In My Wig" is a selection from the witty and provocative articles under the title "Here and There" which for some years now have added spice to THE SOLICITORS' JOURNAL. One's experience is that, among the legal profession, Richard Roe's readers are also his admirers, and for them any attempt to analyse his writing would be painting the lily.

However, it is to be hoped that that larger and more elusive species, the general public, may be encouraged to discover a lawyer who will entertain without intimidating. All too often to the layman the law is a medicine, swallowed without complaint or comprehension, which leaves an unpleasant after-taste. But Richard Roe's legal pills are so thickly coated with the jam of his humour and erudition as to be completely palatable.

His slightly malicious delight in the law's weaknesses and his tongue-in-the-cheek amazement at its idiosyncrasies, which evoke James Thurber's comments on the American scene, lead one to the conclusion that the author is not a lawyer at heart. His interests are apparently boundless, but they are not centred on the law, for which he does not always show the solemn respect customary in members of his profession when making their opinions public. He regards it to some extent as an excellent joke, which in the true Irish tradition he does not hesitate to elaborate and embellish, so that one remembers the telling with enjoyment long after one has forgotten the point. His readers will hope that the joke does not wear thin for Richard Roe, and that he will continue to share it with them.

FOUR YEARS OF LEGAL AID

[*A Special University Lecture in Laws given by Sir Sydney Littlewood at University College London on 8th November*, 1954.]

REVIEWING the first four years of operation of the Legal Aid and Advice Act, 1949, Sir Sydney Littlewood's main conclusions were that although we have the most complete system of legal aid in the world so far as Supreme Court litigation is concerned, there is urgent need for the implementation of Pt. I of the Act, and that the change in money values has made it difficult for some assisted persons to raise the amount of their assessed contributions.

Sir Sydney began his lecture by recalling that the Act of 1949 was based on the report of the Rushcliffe Committee. It contemplated the provision of legal aid and advice on a scale never before known in this country, or indeed in any other country of the world and, although only a small part of the Act had been in operation so far, in considering the way the Legal Aid Scheme had worked during the four years that it had been in operation, the full scope contemplated by the Act must be borne in mind, because, as a result of the experience gained in working such parts as had been brought into force, many bodies and individuals had suggested that other parts should be brought into operation without further delay.

Summarising the provisions of Pt. I of the Act and the rules for determining an assisted person's contribution, he said that it had been calculated that a man with a disposable income of £420 a year might have an income, as usually understood, of £750 a year. Recently The Law Society had obtained information from about forty countries about their respective arrangements for legal assistance. Although most countries made provision for assisting the very poor, as this country had under the Poor Persons Procedure which preceded the Legal Aid Scheme, in no country was assistance available to such a large income group as in Great Britain.

Section 8 of the Act required the Council of The Law Society to consult with the General Council of the Bar on matters of policy and gave power to set up committees of solicitors and barristers for the purpose of carrying out the duties imposed on The Law Society by the Act. From the time the Rushcliffe Committee's report was published the General Council of the Bar and The Law Society had acted in close and happy co-operation and that state of affairs continued.

It was originally intended that all provisions of the Act should be put into operation as soon as practicable after the Act became law, and The Law Society was directed by the Lord Chancellor to prepare and did prepare a scheme to that end. However, the Government of the day had found the financial burden too heavy and the then Lord Chancellor, Lord Jowitt, regretfully asked The Law Society to prepare a scheme limited to Legal Aid in the Supreme Court and remitted actions in the county court. This was done and the Legal Aid and Advice Act, 1949 (Commencement) Order, 1950, on the 2nd October, 1950, brought into operation those parts of the Act necessary to provide such Legal Aid. Thus the modified scheme completed its first four years at the beginning of October, 1954.

Before considering some criticisms which had been made, the lecturer briefly reviewed the functions of Area and Certifying Committees. On the Area Committees, he said, fell a heavy responsibility. To be a member of an Area Committee was regarded in both branches of the profession as an honour, and as a result there was no difficulty in getting the right men to volunteer for this work (so far there had been no woman member of an Area Committee).

A Certifying Committee, he said, would deal with up to thirty applications at a session (2½ hours). Their first duty was to decide whether the applicant " has reasonable grounds for taking, defending or being a party to the actual or contemplated proceedings." They had to make their decision without knowing anything of the case of the other side except such as might appear from correspondence, if any. They had power to call the applicant before them, but this power was rarely exercised. If it were generally exercised, the time spent and cost involved would be very great.

" The legal profession must always be grateful," he continued, " to Lord Jowitt, who was the Lord Chancellor responsible for getting the Act through Parliament and for introducing the present scheme, for the way he consulted the profession on every point. He wanted to see both branches giving their full support to the scheme and in that he succeeded, because when the scheme started to work on the 2nd October, 1950 (and let me tell you that was an anxious day for many of us including Lord Jowitt), 8,427 practising solicitors and 1,679 barristers had joined panels of those willing to accept clients under the Act. Those figures pleased and surprised us.

There was a tremendous initial rush of applications for assistance. Many people wanting divorces had been waiting for the scheme to start and in the first six months, that is from 2nd October, 1950, until 31st March, 1951, there were 36,765 applications for certificates, the large majority being in matrimonial cases. Staffs and committees could not keep pace and inevitably there were cases of delay in dealing with applications.

For the year 1951/1952 (the first full year) 53,610 applications were received. For the year ended 31st March, 1954, the number of applications received was 47,354, and the Council of The Law Society think that that may be regarded as about the normal to be expected each year under the present scheme."

Those who had been closely associated with the scheme from the earliest days, he said, were well satisfied with the results. There had been fewer troubles than they expected. To the 30th September, 1954, the number of persons who had been assisted under the scheme was 125,558—not a bad record for four years, he thought.

Turning to criticisms of the scheme, Sir Sydney said: " The first is that contributions are too high. Critics say that the deduction of £156 from the disposable income is not enough, and that the allowances in the second part of the First Schedule to the Assessment of Resources Regulations, especially the £78 maximum in para. 8, are too small. The figure of £156 was recommended by the Rushcliffe Committee. They made their report in 1945. The value of the pound has dropped since that time and on the face of things a good case can be made out for increasing the figure of £156. An almost equally strong case can be made for more liberal allowances in the Schedule. On the other side there are two matters to be considered; the first is that if the contribution of assisted persons were reduced, the Government payment to the Legal Aid Fund would need to be increased and the Government say they cannot find more money. The second is that solicitors and barristers who accept work under the scheme get only 85 per cent. of their normal costs."

Solicitors' overhead expenses, he said, were very heavy (the Rushcliffe Committee found that at that time they represented 70 per cent. of a solicitor's profit costs) and the reduction of 15 per cent. on the gross costs represented a 50 per cent. cut in profit to solicitors, while barristers found they were making a substantial sacrifice in accepting 85 per cent. of a fee fixed by the taxing masters. Not every legally assisted person was subsidised by the State, because in many cases the contribution and costs recovered covered the actual cost of the case, but every legally assisted person was, in fact, subsidised by the legal profession.

" Already it is possible for a man with an income of £750 a year to obtain Legal Aid," Sir Sydney said, " and the legal profession are not prepared to see people with larger incomes than that getting Legal Aid at the expense of the profession. It is very difficult to suggest that they should. The present rate of contribution by assisted persons does not deter many thousands from taking advantage of the scheme each year."

There had, he went on, been complaints from assisted persons, barristers and solicitors about delay in getting money from the Legal Aid Fund. The Legal Aid Committee had done all it could to prevent delays in payment, but the major causes of delay were beyond the control of The Law Society. Where money had been recovered on behalf of an assisted person, the amount that he could receive could not be ascertained until the costs position was determined after taxation. The work of preparing a bill for taxation was often heavy and sometimes a solicitor could not get the bill out until a considerable time after the action had been disposed of by the judge. The delays in the taxing office at the present time were such that if a bill were lodged for taxation to-day, the appointment for taxation would be many weeks ahead, though determined steps were being taken to reduce delay in the taxing office. While it was sometimes possible to make the successful litigant a payment on account pending the costs position being settled, this was not altogether satisfactory.

People other than assisted litigants often complained that certificates were granted too easily (judges, too, had complained of this). Of this criticism Sir Sydney said :—

" When both sides of a case are known and there has been cross-examination, it is sometimes difficult to know where truth lies and judges are sometimes upset on appeal. Think how much more difficult when a case of one side only is known, and that only on paper. The Certifying Committee are not the judges of the action (what an outcry there would be if they sought to become that !) ; their only duty is on such material as they have to decide whether the applicant has reasonable grounds for taking the step he wishes to take."

Sometimes both parties to a two-party suit were assisted persons: it had been said that in those cases, The Law Society ought to be able to determine which (if either) party should be assisted. To this there was the objection that if a Certifying Committee were to undertake the task of deciding which application should be permitted to proceed and which to be rejected, they would be judging the case and without the advantage of hearing witnesses, and the more practical objection that one could never be sure of pairing such cases before the certificate stage without setting up an organisation which would be disproportionately costly and occasion delays.

An objection voiced before the Rushcliffe Committee, and which continued to be put forward, was that if the State assisted a litigant and he was unsuccessful in the proceedings, the State should pay the costs of the successful unassisted person.

" This matter was considered in Parliament and Parliament decided against it," said the lecturer. " It is no part of my duty to say whether Parliament was right or wrong, but I feel justified in putting before you some points that are material in considering this criticism :—

(1) The cost to the State might be heavy.

(2) All incentive to an unassisted litigant to keep costs as low as possible would be removed. You will remember that certain expenses for an assisted person (for instance, the engagement of more than one counsel, interlocutory appeals, the employment of professional witnesses) can only be incurred with the consent of the Area Committee.

(3) There would be little or no incentive to settle.

(4) In proceedings where there is no assisted person, the successful litigant sometimes fails to get his costs because the person against whom the order for costs is made cannot find the money. One encounters this in all divisions of the High Court, but particularly in the Divorce Division.

(5) The additional financial burden involved in indemnifying successful unassisted litigants would make the extension of legal aid or enlargement of the class entitled to its benefits more difficult."

There had, he went on, been complaints, sometimes well founded, that actions were continued after it had become plain either that the assisted person had no hope of succeeding, or that if he succeeded, the fruits of success would be disproportionate to the costs involved and that holders of Civil Aid Certificates were less willing than other litigants to settle actions. Regulation 14 (7) of the General Regulations gave a solicitor or barrister the right to give up an assisted person's case if, in his opinion, the assisted person had required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the Legal Aid Fund or had required unreasonably that the proceedings be continued. It was found that solicitors and barristers felt they could only exercise the right conferred on them by this rule in extreme cases and even then there was a risk that the idea would get abroad that they were not prepared to protect their client's interest. Because of this, one of the amended regulations (11 (2A) (*b*)) made it possible for an Area Committee to discharge a certificate on their own initiative if they had information which led them to consider that the assisted person no longer had reasonable grounds to continue the action, or that it was unreasonable in the particular circumstances for him to continue to receive Legal Aid. Something like 130 certificates had already been discharged by Area Committees under this new power, and it was hoped that complaints of unreasonable continuance of assisted persons' cases would become rare.

In a brief reference to The Law Society's Divorce Department, Sir Sydney said that s. 6 (7) of the Legal Aid and Advice Act provided that where the maximum contribution of an assisted person does not exceed £10, the case shall be dealt with by the Divorce Department and not by a panel solicitor in private practice. Barristers undertaking Divorce Department cases got a fee reduced even more than the 85 per cent. fee in ordinary cases. In practice, the Divorce Department's clients were nearly all wives whose earnings were small and who had no hope of getting an order for security for costs. The Divorce Department was unpopular with barristers and solicitors : with barristers because of the low fees ; with solicitors because they frequently advised and helped a client with matrimonial troubles before the stage of issuing proceedings was reached, helped that client to complete the form of application for Legal Aid and then lost the client to the Divorce Department. The Law Society occasionally received letters from assisted persons complaining that they were required to leave the solicitor who had done much to help them and go to a " Department," but it received a much larger number of letters of appreciation and thanks from persons whom the Department had helped.

The Act, regulations and scheme had given rise to many decisions by the courts. Among those that had settled matters of principle were *Whipman* v. *Whipman* [1951] 2 All E.R. 228, which decided that information supplied to The Law Society or the National Assistance Board in connection with an application for a Civil Aid Certificate may not be disclosed to the court, and *R.* v. *Manchester Legal Aid Committee* [1952] 2 Q.B. 413, in which it was decided that a Local Committee is subject to certiorari and that where a person is conducting litigation in a representative capacity (in this case as a trustee in bankruptcy on behalf of the bankrupt's estate) it is the means of the actual litigant, and not of the person who will benefit by a successful result of the proceedings, that must be assessed to determine whether a Civil Aid Certificate is issued, and if so, the contribution to be paid.

There had been many cases dealing with the costs position of an assisted person, as a result of which the following points emerged :—

(1) By reason of s. 1 (7) of the Act, the court must exercise its discretion as to costs to be awarded to an assisted person without regard to the fact that he is assisted (*Starkey* v. *The Railway Executive* [1951] 2 All E.R. 902).

(2) In a matrimonial cause the wife, whether legally assisted or not, is entitled to apply for security for costs against her husband, who is an assisted person (*Evans* v. *Evans* [1953] 1 All E.R. 70).

(3) An order for security for costs can be made against a legally assisted plaintiff resident out of the jurisdiction (*Jackson* v. *John Dickinson & Co. (Bolton) Limited* [1952] 1 All E.R. 104).

(4) An assisted person can be ordered to give security for the costs of an appeal (*Bampton* v. *Cook* [1954] 1 All E.R. 457).

(5) An action founded in tort where the plaintiff is an assisted person may be remitted to the county court under s. 46 of the County Courts Act, 1934 (*Burton and Another* v. *Holdsworth* [1951] 2 All E.R. 381).

(6) A Civil Aid Certificate issued to replace an emergency certificate more than three months after the emergency certificate is issued, is a nullity (*Greenwood* v. *Sketcher* [1951] 1 All E.R. 750).

Sir Sydney continued : " From time to time judges have criticised the workings of the Act. The Master of the Rolls expressed grave concern about the way that certificates to appeal were granted. At the request of the Lord Chancellor, The Law Society investigated this matter and it was found that of the appeal certificates issued up to mid-1953, in the Court of Appeal in non-matrimonial causes the measure of success of assisted litigants was the same as that of ordinary litigants, and in other appellate courts (divisional courts) the success of legally assisted persons was higher than in ordinary suits."

In a solicitor's office, he added, many writs were issued without a principal knowing anything of that particular matter, but if there was an appeal, it was invariably a principal who made the final decision to advise a client to appeal. In other words, the solicitor in private practice believed that ripe experience was necessary to advise on an appeal.

" The Law Society thought it right that that principle should be adopted in Legal Aid cases, and accordingly they recommended to the Lord Chancellor that a certificate to appeal should be granted by the Area Committee and not by a Certifying Committee. The Lord Chancellor accepted that recommendation and it is embodied in the new regulation 3B."

From the time the scheme came into operation, he said, the Legal Aid Committee had kept a record of every criticism that

came to their knowledge. Some of these criticisms were well-founded and, as a result of the record kept by the Legal Aid Committee, recommendations were made to the Lord Chancellor that the General Regulations should be amended in certain ways. As a result of that recommendation, the Legal Aid (General) (Amendment No. 1) Regulations, 1954, were made. The amended regulations had only been in operation for six months, but the general view was that they had brought about many needed improvements. To bring about uniformity of practice the Council of The Law Society issued notes for the guidance of Area and Local Committees and held quarterly meetings of all Area Chairmen and Vice-Chairmen, when experience was pooled, difficulties discussed and practice agreed.

Sir Sydney then quoted the following passage from the Lord Chancellor's Advisory Committee's recommendations and comments published in February last :—

> " In our two previous reports we have strongly urged your lo dship to bring into force those parts of the Act which make up the Legal Advice Scheme and we set out at some length our reasons for recommending that course. We consider that the present truncated scheme can never be satisfactory while it remains in isolation and for that reason we would welcome any extension of the scope of the Act, whether to provide for advice or Legal Aid in the County Courts, or in the Magistrates' Courts. For the reasons we have already given, we are still of the view that first priority should be given to the Legal Advice Scheme."

" The Council of The Law Society share the views expressed by that paragraph," he said. " The majority of the applications considered by Local Committees are prepared by the applicant himself. If the Legal Advice Scheme were in operation, applicants could obtain the assistance of a solicitor to prepare an application for Legal Aid. Section 7 (2) of the Act makes provision for this. It is the belief of The Law Society that the number of certificates issued would be smaller if legal advice were available. Apart from that, however, there is need for legal advice. The Rushcliffe Committee stressed this need and, as the Advisory Committee pointed out in their last comments and recommendations, the need for legal advice is now even greater than it was at the time the Rushcliffe Committee made their report. At that time there were many poor man's lawyers—they functioned all over the country—most have now ceased to function because those, who by service and contributions maintained poor man's lawyers, ceased to do so in the belief that the advice provisions of the Act would be implemented."

Legal advice given to a worried man or woman could often be a most wonderful thing. That was found by all Service Departments during the war, and was well known to all who had served on poor man's lawyers.

It seemed anomalous that in the county court, " the poor man's court," there was no Legal Aid except in cases of remitted actions. Cases in that court were often of supreme importance to the individuals concerned, and the costs of a county court action could be heavy and more than the parties could afford. There was a growing body of opinion that Legal Aid should be extended to the county court with the minimum of delay. With the decreasing value of the pound there was a good deal to be said in favour of extending county court jurisdiction, but it would seem difficult to do that without providing Legal Aid in county courts. Having regard to the class of case coming before courts of summary jurisdiction for which the First Schedule of the Act contemplated that Legal Aid should be available, it was, moreover, difficult to suggest that Legal Aid should be given in the county court and not extended to those cases in courts of summary jurisdiction and quarter sessions.

" My own view is that the remaining provisions of Pt. I of the Act ought to be brought into operation, and we cannot claim to have a complete system of Legal Aid until they are," he said.

Summing up, Sir Sydney gave his own conclusions on the first four years' working of the scheme. " It has worked surprisingly smoothly considering the immense changes it brought about," he said. " I attribute this largely to the happy relations that have existed between the Lord Chancellor and his department on the one hand and The Law Society and the Bar on the other. The support given by both branches of the legal profession has been most gratifying and continues to be gratifying. The service has been appreciated by the thousands who have benefited from it, but it has not been so fully appreciated by those who found themselves in the position of unassisted persons opposed to an assisted person. Some of my doctor friends have had a great deal to say to me on this point.

Because of the change in money values since the Act was passed, some assisted persons have found it difficult to raise the amount of contribution assessed to be paid by them.

There is urgent need for the implementation of the whole of Pt. I of the Act.

We have cause to be proud that in respect of litigation in the Supreme Court we have the most complete system of Legal Aid in the world."

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note

COURT OF APPEAL

APPEAL FROM COUNTY COURT: NEW POINT OF LAW: INADMISSIBILITY

United Dominions Trust, Ltd. *v.* Bycroft

Evershed, M.R., Hodson, L.J. and Upjohn, J.

12th October, 1954

Appeal from the Mayor's and City of London Court.

By a hire-purchase agreement dated 18th July, 1952, the defendant agreed to purchase an ice cream conservator for £87. The agreement provided, in pursuance of s. 4 of the Hire-Purchase Act, 1938, that the hirer might put an end to the agreement subject, in effect, to payment of half the instalments, and, further, that the hirer should give to the owner, Messrs. Munday (Walthamstow), Ltd., a promissory note as collateral security for due payment of the instalments. The promissory note, which was executed by the defendant, was at the foot of the agreement and was separated from it by perforations. The plaintiffs, a company whose business included that of financing hire-purchase contracts, having paid the purchase price to the owners, had acquired from the owners the benefit of the hire-purchase agreement. The defendant failed to pay the last four instalments under the hire-purchase agreement and the plaintiffs sued on the promissory note, claiming as holders in due course. The defendant in his defence claimed that the promissory note was rendered void by s. 5 (*c*) of the Hire-Purchase Act, 1938. At the hearing before the county court judge, the plaintiffs' claim was argued on the footing that they were holders in due course of the promissory note and, therefore, were entitled to sue upon it whatever its earlier history, that it was a wholly separate instrument from the hire-purchase agreement and was unaffected by any invalidity which might attach to any provisions of that agreement. The defence was that the promissory note and the agreement were one single agreement and its effect was to enable the note to be sued on even though the defendant had terminated the hiring. The county court judge dismissed the action. On the appeal, the plaintiffs did not claim to be holders in due course or that the promissory note was an instrument distinct from the hire-purchase agreement but they contended that a written agreement which modified the liability of the maker of a promissory note was good as between the original parties, and the plaintiffs could sue upon it. The defendant objected that this was a new point and not available to the plaintiffs.

EVERSHED, M.R., said he would not define what was a " new point " ; probably the test was common sense in the light of all the circumstances of a particular case. In the present case, although the general issue of the validity of the hire-purchase agreement and whether any invalidity affected the right of the holder of the promissory note to sue upon it had been raised by the pleadings, the new way of putting the plaintiffs' case amounted to a " new point " of law within the meaning of that formula as used and applied ever since *Smith* v. *Baker & Sons* [1891] A.C. 325 ; 7 T.L.R. 679, and was not open to the plaintiffs. His lordship went on to consider the further question as to the

effect of the execution of a promissory note by a hirer as collateral security to a hire-purchase agreement, having regard to the provisions of s. 5 (*c*) of the Hire-Purchase Act, 1938, but did not decide this point.

HODSON, L.J., and UPJOHN, J., agreed. Appeal dismissed.

APPEARANCES: *Maurice Lyell*, Q.C., and *J. Rankin* (*H. H. Harper*); *Christopher Shawcross*, Q.C., and *Maurice Share* (*Leader, Henderson & Leader*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 1345

CHANCERY DIVISION

LEGITIMACY: BIRTH OF CHILD NINE MONTHS AFTER DEATH OF MOTHER'S FIRST HUSBAND AND THREE MONTHS AFTER HER REMARRIAGE: CONFLICT OF PRESUMPTIONS

***In re* Overbury, deceased; Sheppard *v.* Matthews and Others**

Harman, J. 13th October, 1954

Adjourned summons.

On 4th July, 1868, *M*, a spinster, married *R*. On 26th January, 1869, *R* died from injuries sustained in an accident. On 27th July, 1869, *M* married *S*. On 24th September, 1869, *M* gave birth to a daughter. On the birth certificate *M* gave the child's second Christian name as *R* but gave the child's father as *S*. In 1941 the daughter died intestate without leaving any issue. A summons was taken out during the course of an inquiry as to her next of kin for the opinion of the court whether *R* or *S* was the lawful father of the intestate.

HARMAN, J., said that three points of view had been put forward. First, that the intestate must be regarded as the child of *S*, as the birth certificate stated. Secondly, that there was a presumption that she was the legitimate child of *R*, to whom her mother was married at the time when she normally would have been conceived; if the mother had not remarried, the intestate would have been considered her legitimate child. Thirdly, that the intestate could be regarded as a legitimately born child without any decision as to paternity, as the relatives of neither husband had proved their case. The third contention must be rejected, as one could only prove a child legitimate by evidence as to the marriage of its parents, which involved the identification of the father as well as the mother. There seemed to be no authority on the question, though it had been suggested *obiter* in *In re Heath* [1945] Ch. 417 that in such circumstances the presumption of legitimacy would make the child the legitimate child of two fathers; but no presumption could lead to such a result. It was not possible to accept without evidence the supposition that the mother, within six months of her marriage, had ceased to have marital relations with her husband and had cohabited with a lover. It was quite common for a woman to remarry shortly after her husband's death. If she was carrying his child, and the second husband had no objection to marrying her in those circumstances, it was quite natural that the mother should register the birth in the way in which she did. All the probabilities pointed in favour of the presumption that the intestate was the legitimate child of *R*.

Judgment accordingly.

APPEARANCES: *T. K. Wigan; G. D. Morton; A. A. Baden Fuller; A. P. McNabb* (*Stafford Clark & Co.*).

[Reported by F. R DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 644

BANKRUPTCY: LEGAL AID: APPLICATION BY PETITIONING CREDITOR TO TRANSFER COUNTY COURT PROCEEDINGS TO HIGH COURT: OBJECT OF APPLICATION TO SECURE BENEFIT OF LEGAL AID

***In re* Crossley, a Debtor**

Upjohn, J. 18th October, 1954

Application.

In bankruptcy proceedings in a county court the petitioning creditor desired the trustee to take proceedings against the debtor and another person to set aside certain transfers made by the debtor. The trustee was unwilling to do so unless he received a proper indemnity against the costs which he would incur and, if unsuccessful, have to pay. The petitioning creditor, who was unable to give such an indemnity and wished to have the proceedings transferred to the High Court so that she could have the benefit of legal aid, obtained a certificate entitling her to legal aid: "(1) to take proceedings in the High Court of Justice, Bankruptcy Court, for (*a*) application to the court for leave to bring proceedings in the name of the trustee in bankruptcy to avoid settlements made by the bankrupt, and (*b*) to take such proceedings against the bankrupt, and to enforce any order for costs." The petitioning creditor applied to the court accordingly.

UPJOHN, J., said that r. 21 of the Bankruptcy Rules, 1952, gave the court an absolute discretion, but it must be exercised judicially. The only ground for the application was that the petitioning creditor desired legal aid. The Legal Aid and Advice Act, 1949, provided that legal aid might be provided in the county court as well as in the High Court, but it did not yet so operate. While those responsible for the application of the Act did not think it desirable to extend its operation to county court proceedings, it would not be a proper exercise of judicial discretion to order a transfer for the purpose indicated. There was a further point on the form of the certificate. If the proceedings were transferred, any application to set aside the transactions impugned must be made in the name of the trustee; the petitioning creditor would not be before the court in name. If the trustee lost the case, he would have to pay the respondent's costs and there could be no taxation under the Act of the trustee's costs. The only provision of legal aid that could be of assistance to the trustee and to the petitioning creditor would be a legal aid certificate in the name of the trustee, which was not yet possible (*R.* v. *Manchester Legal Aid Committee* [1952] 2 Q.B. 413). It would not be right to join the petitioning creditor as an applicant; she might in substance be the applicant, but in law she was not. It would not be right to order a transfer of proceedings solely for the purpose of permitting the State to pay for proceedings in which, at law, the applicant had no title to sue. Application dismissed.

APPEARANCES: *Bernard Lewis* (*Raymond S. Hill*); *Muir Hunter* (*Savory, Pryor & Blagden*).

[Reported by F. R. DYMOND, Esq. Barrister-at-Law] [1 W.L.R. 1353

MAINTENANCE: ACTION FOR RIVER POLLUTION SUPPORTED BY ANGLING ASSOCIATION: COMMON INTEREST

Martell and Others *v.* Consett Iron Co., Ltd.

Danckwerts, J. 22nd October, 1954

Procedure summons.

The plaintiffs, a riparian owner and the trustees of an angling club on the River Derwent, claimed that the effluents from the defendant company's ironworks polluted the water of their fishery and they brought an action against the defendants to restrain their pollution of the water. The plaintiffs were supported in the action by the Anglers' Co-operative Association, an association whose objects included the protection of the interests of anglers and the prevention of river pollution. The plaintiffs received indemnities for their costs from the Anglers' Co-operative Association Trustee Co., Ltd. (a company which managed the affairs of the association), the indemnities being given on condition that the association retained complete control of the action. The defendants by this summons asked for a stay of the proceedings on the ground that the acceptance of the indemnities by the plaintiffs constituted maintenance, and that the proceedings were accordingly vexatious and oppressive and an abuse of the process of the court.

DANCKWERTS, J., said that it was contended on behalf of the defendant company that the action should be stayed and the plaintiffs should not have the chance to have their case heard, so long as they received the assistance of these indemnities without which the plaintiffs would not have felt able to face the formidable expense which, it was well known, the carrying on of a pollution action involved. If this contention were correct, it might be thought that there was something wrong with the state of the law. This happened to be a case about the interests of anglers, but the principle involved was of much greater importance. It would be disingenuous to disregard the difficulties which the man of small financial resources (not confined to the legal aid class) faced in present-day conditions in defending such rights as he might have against infringement by powerful commercial corporations or adversaries who might draw their strength from the rates or the National Exchequer. If such a man might not avail himself of the help of sympathisers, his condition might be serious indeed. The English law of maintenance founded on the doctrine of public policy was the product

of the particular abuses which arose in the conditions of English medieval society; but a doctrine evolved to deal with cases of oppression should not be allowed to become an instrument of oppression, which it must do unless men were allowed to combine or receive contributions to meet a more powerful adversary; and unless the doctrine was capable of keeping up with modern thought it must eventually cease to exist. The rule of law referred to by Lord Esher in *Alabaster* v. *Harness* [1895] 1 Q.B. 339 was a collection of out-of-date rules which no longer fitted the conditions of modern life and were based on a conception of public policy long since obsolete, and the support of legal proceedings based on a *bona fide* community of pecuniary interest or religion or principles or problems was a sufficient common interest and did not constitute maintenance. His lordship considered the authorities, in particular *Neville* v. *London "Express" Newspaper, Ltd.* [1919] A.C. 368; *Bradlaugh* v. *Newdegate* (1883), 11 Q.B.D. 1; *British Cash & Parcel Conveyors, Ltd.* v. *Lamson Store Service Co., Ltd.* [1908] 1 K.B. 1006; *Plating Co.* v. *Farquharson* (1881), 17 Ch. D. 49, and *Baker* v. *Jones* [1954] 1 W.L.R. 1005, and said that, in the result, he took the view that the support received by the plaintiffs in the carrying on of the action was not unlawful. That was enough to dispose of the application, and it was not really necessary to deal with the question whether an application for the stay of proceedings was an appropriate remedy (on the assumption that there was a case of unlawful maintenance). However, if it were a proper procedure, it was strange that no previous exercise of the jurisdiction of the court to stay proceedings in such a case could be produced. The application would accordingly be dismissed.

APPEARANCES: *Sir Andrew Clark*, Q.C., and *Kenneth Elphinstone* (*Allen & Overy*); *Charles Russell*, Q.C., and *G. H. Newsom* (*Marchant, Gerrish & Newington*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[3 W.L.R. 648**

INTERLOCUTORY APPLICATIONS AFTER CASE HAS APPEARED IN WITNESS LIST

Morley and Another *v.* Woolfson and Another

Harman, J. 22nd October, 1954

Application.

An action, having been set down for trial on 2nd July, 1954, appeared in the list on 26th July, and was fixed for hearing on 28th October. On 20th October, a summons by one of the defendants asking for particulars of the statement of claim came before the master and was dismissed on the grounds (*a*) that para. 6 of the Practice Direction (Witness List) [1954] 1 W.L.R. 693; *ante*, p. 256, which states that "all applications with regard to cases appearing in the Witness List are to be made to . . . the judge in charge of the list" deprived the master of jurisdiction to hear the application, and (*b*) that all necessary parties had not been made respondents to the application. The second defendant now applied for postponement of the trial of the action to enable the application for particulars to be dealt with.

HARMAN, J., said that the intention of para. 6 of the Practice Direction was that applications as to the hearing of cases appearing in the witness list were to be made to an indicated judge; it did not affect the ordinary practice with regard to interlocutory applications which should, as hitherto, normally be made by summons returnable before a master. In the case before him, his lordship refused to postpone the hearing of the action and directed that the application for particulars should be adjourned into court to come on with the trial of the action. If the judge then thought that further particulars should be given, he would so order.

APPEARANCES: *J. G. Strangman*, Q.C., and *G. B. H. Dillon* (*Zefferlt, Heard & Morley Lawson*); *R. Walton* (*Saunders, Sobell, Greenbury & Leigh*); *G. H. Crispin* (*Miller, Clayton & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1363**

QUEEN'S BENCH DIVISION

TOWN AND COUNTRY PLANNING: MAGISTRATE'S JURISDICTION ON APPEAL AGAINST ENFORCEMENT NOTICE

Keats *v.* London County Council

Lord Goddard, C.J., Lynskey and Parker, JJ.
14th October, 1954

Case stated.

The Town and Country Planning Act, 1947, provides by s. 23: "(1) If it appears to the local planning authority that any development of land has been carried out after the appointed day without the grant of permission . . . the local planning authority may within four years of such development being carried out . . . serve on the owner and occupier of the land a notice under this section. (2) Any notice served under this section (hereinafter called an 'enforcement notice') shall specify the development which is alleged to have been carried out without the grant of such permission . . . may . . . require . . . the discontinuance of any use of land . . . (4) If any person on whom an enforcement notice is served under this section is aggrieved by the notice he may . . . appeal against the notice to a court of summary jurisdiction . . . and on any such appeal the court—(*a*) if satisfied that permission was granted . . . the development to which the notice relates, or that no such permission was required in respect thereof, or, as the case may be, that the conditions subject to which such permission was granted have been complied with, shall quash the notice to which the appeal relates; . . . (*c*) in any other case shall dismiss the appeal." In October, 1949, premises, which had previously been used for residential purposes, were occupied by a firm of builders who used them for a few weeks for light industrial purposes within the meaning of the Town and Country Planning (Use Classes) Orders, 1948 and 1950. The premises were then unoccupied until 15th February, 1950, when they were let to optical manufacturers who also used them for light industrial purposes. On 11th November, 1953, the county council served an enforcement notice on the owner which alleged that there had been a development without permission and stated: "Beginning the use of the land described . . . for the purposes for which the same is now used namely as an industrial building within the meaning of the Town and Country Planning (Use Classes) Order, 1948, and the Town and Country Planning (Use Classes) Order, 1950"; and the notice required the owner to determine such use. The owner appealed to the magistrate under s. 23 of the Act alleging, first, that the notice was too vague and, secondly, that, as the development by the builders had taken place more than four years before the date of the notice, the notice could not in law relate to that development. The magistrate dismissed the appeal. The owner appealed.

PARKER, J., said that by the language of s. 23 (4) the magistrate's jurisdiction was strictly limited to the question whether permission for development had been granted or was not required. It was first objected that the notice was too vague; but it was plain that it referred to the current use at the time, that of optical manufacturing. It was next objected that the notice was out of time, in that the relevant development took place when the builders went in, more than four years before the date of the notice. The answer to that was that, by s. 23 (4), it was not a matter for the magistrate (*Mead* v. *Chelmsford R.D.C.* [1953] 1 Q.B. 32). The *Lincolnshire* case [1953] 2 Q.B. 178, relied on by the appellant, where a notice had been quashed, was distinguishable in that the development complained of had taken place before the appointed day. The magistrate had no jurisdiction to embark on the inquiry suggested, and his decision should be upheld.

LORD GODDARD, C.J., and LYNSKEY, J., agreed. Appeal dismissed.

APPEARANCES: *A. P. Marshall*, Q.C., and *F. R. McQuown* (*J. C. Fox, Gamble & Son*); *J. S. Daniel* (*J. G. Barr*, Solicitor, L.C.C.).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1357**

ROAD TRAFFIC: WHETHER CONVERTIBLE LORRY "HEAVY MOTOR CAR"

Cording *v.* Halse

Lord Goddard, C.J., Lynskey and Ormerod, JJ.
20th October, 1954

Case stated.

The defendant owned a motor lorry which had behind the driver's cab a large flat wooden platform suitable for carrying bulky solid loads. In order to make the lorry suitable for the carriage of cattle, a large box-like container was attached to the platform by six wing nuts and bolts. If the lorry was being used for the conveyance of cattle or other animals the container was necessary to or ordinarily used with the lorry; conversely, when the lorry was used for purposes requiring a flat base the presence of the container was not necessary or ordinarily used with it. The unladen weight of the lorry without the container was under three tons, but with the container its unladen weight was in excess of three tons. There were no markings on the

lorry, nor did it carry a speed limit disc, as required by regs. 61 and 63 of the Motor Vehicles (Construction and Use) Regulations, 1951. The lorry with the container attached was used on a road with the defendant's authority and permission and he was charged with failing to have the prescribed markings on the lorry, and with permitting the use of a motor vehicle not displaying a speed limit disc, contrary to regs. 61, 63 and 101. The justices considered that the container was an alternative body within the meaning of s. 26 of the Road Traffic Act, 1930, the weight of which must be included in the computation of the unladen weight of the lorry; since the combined weight exceeded three tons, they held that the lorry was a "heavy motor car" to which the regulations applied and convicted the defendant. The defendant appealed. Regulation 61 of the Motor Vehicles (Construction and Use) Regulations, 1951, provides, in the case of a "heavy motor car," for the marking on it of the unladen weight and maximum permissible speed; reg. 63 (1) provides for the display of a disc bearing the number "20." The effect of s. 2 (1) of the Road Traffic Act, 1930 (as modified), is to exclude from the definition of "heavy motor cars" and bring within the definition of "motor cars" vehicles constructed or adapted for use for the conveyance of goods of which the maximum weight unladen does not exceed three tons. By s. 26 of the Road Traffic Act, 1930, ". . . the weight unladen of any vehicle shall be taken to be the weight of the vehicle inclusive of the body and all parts (the heavier being taken where alternative bodies or parts are used) which are necessary to or ordinarily used with the vehicle when working on a road."

LORD GODDARD, C.J., said that he could very well understand the view which the justices had taken, and if he had not thought it his duty to follow cases in the Court of Justiciary in Scotland he should have found as they had done. The difficulty was that in 1936 the very same point had come before the Court of Justiciary in Scotland in *M'Cowan* v. *Stewart* [1936] S.C. 36, which was indistinguishable in any material respect from the present case. It was heard by a full court of seven Lords of Justiciary, and the court, by a majority of six to one, put a very strict construction on the word "alternative" and held that there was not an "alternative" body merely because something was added to the body, therefore that there had been no breach of the section because the lorry was being used with a receptacle upon it. It was desirable that statutes of this nature should be given the same interpretation on either side of the border, and that there should not be a conviction in England and, on similar facts, no conviction in Scotland, or vice versa. In this class of subject-matter, this court always tried to follow the decisions of the Scottish court, and the Scottish court paid the same respect to decisions in this country so that there should be that uniformity which was desirable. The court must hold that on the facts disclosed in the case there was no offence.

LYNSKEY and ORMEROD, JJ., agreed. Appeal allowed.

APPEARANCES: *M. A. B. King-Hamilton*, Q.C., and *John Harington* (*Baileys, Shaw & Gillett*, for *Tozers*, Dawlish); *Robert Hughes* (*Rashleigh & Co.*, for *Alms & Young*, Taunton).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[3 W.L.R. 625**

SHIPPING: CHARTERPARTY: MEANING OF "WEATHER-WORKING DAYS"

Alvion Steamship Corporation Panama *v.* Galban Lobo Trading Co. S.A. of Havana

McNair, J. 20th October, 1954

Special case stated by an umpire.

A charterparty made between shipowners (claimants) and charterers (respondents) in a form common in the Cuban sugar trade provided that "lay days at the average rate of 5,000 bags . . . provided vessel can receive at these rates per weather-working day . . . shall be allowed to the said charterers . . . Time lost or saved is to be calculated . . . in accordance with the custom of [each loading] port." A dispute which arose between the parties on the question of demurrage was referred to an umpire, who found that by the custom of the relevant ports the ordinary daily working hours were eight hours and four hours on Saturdays; that certain lay time should be allowed to the charterers for rain; that on the true construction of the charterparty "weather-working day" meant the working hours in accordance with the custom of the port, and not the twenty-four hours of a day; and he made an award accordingly. By the case stated: "If the court should find that a weather-working day at the loading ports is one of twenty-four hours, then my award shall not stand, and instead thereof, the [shipowners] are entitled to demurrage in respect of" certain periods.

MCNAIR, J., said that the question was whether the charterers were right in applying the principle of a day of eight hours and four hours on Saturday to their computation of lay time, or whether the shipowners were right in contending for a calendar day of twenty-four hours. In *Branckelow Steamship Co.* v. *Lamport & Holt* [1897] 1 Q.B. 570, Lord Russell of Killowen, C.J., said that it was absurd to suggest that "when any substantial amount of work is done upon a particular day the ship is entitled to reckon that as a weather-working day." An examination of that judgment showed that Lord Russell, C.J., considered that a weather-working day had to be determined by seeing to what extent the weather interfered with working during customary port hours, not during the twenty-four hours of the calendar day. *Bennetts & Co.* v. *Brown* [1908] 1 K.B. 490 was not inconsistent with that view. As a matter of construction, applied to the facts found regarding the custom of the ports, the umpire had been right, and his award should be affirmed. Award affirmed.

APPEARANCES: *E. W. Roskill*, Q.C., and *R. A. MacCrindle* (*Stokes & Mitcalfe*); *A. A. Mocatta*, Q.C., and *P. Bucknill* (*Stocken, May, Sykes & Dearman*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 618**

CRIMINAL LAW: AIDING AND ABETTING: DESPATCH BY ROAD WITHOUT PERMIT: CONSIGNOR'S DUTY TO MAKE INQUIRIES

Davies, Turner & Co., Ltd. *v.* Brodie

Lord Goddard, C.J., Lynskey and Ormerod, JJ.
21st October, 1954

Case stated.

The appellants were charged with aiding, abetting, counselling and procuring *H* in the commission of the offence of using a goods vehicle with an "A" licence for the carriage of goods without the necessary permit. *H's* driver had approached the appellants' manager for an order for the carriage of goods on a return journey. The manager asked the driver if he had a permit to carry the goods and, on the driver saying "Yes," but failing to produce the permit, the manager required him to sign an assurance that his employers held the necessary documents and, if required, would produce them. In fact, there was no permit for such carriage. In giving the assurance, the driver misinformed the appellant's manager, but acted in ignorance in so doing. The justices, being of the opinion that the appellants gave the order for the carriage of the goods without requiring the production of the permit or authorisation and without making sufficient inquiry as to the necessity for or existence of such permit or authorisation, found the appellants guilty.

ORMEROD, J., said that the appellants contended that there was no evidence of aiding and abetting because they obtained from the driver an assurance that the permit was in order before they put the goods on the vehicle. That seemed to be a contention to which there was no answer, but the prosecution had relied on *Carter* v. *Mace* [1949] 2 All E.R. 714, where, in somewhat similar circumstances, a consignor of goods was found guilty of aiding and abetting; it was contended that that case showed that it was the duty of the consignor to make inquiries, and if, as the justices found, the appellants' inquiries were insufficient, that was a question of fact. But in *Carter* v. *Mace* the facts differed in that the consignors had made no inquiries at all as to whether the vehicle was properly licensed; it was a case decided on its particular facts. Under the circumstances of the present case, the appellants could not be held guilty.

LORD GODDARD, C.J., agreeing, said that he would repeat what he had said in *Johnson* v. *Youden* [1950] 1 K.B. 544, that before a person could be convicted of aiding and abetting he must at least know the essential matters which constituted the offence. *Carter* v. *Mace* (*supra*) laid down no principle of law, and was decided on its own particular facts. In the present case, it could not be said that the defendants had aided and abetted when they had no reason to suppose that the facts were present which would consitute an offence.

LYNSKEY, J., agreed. Appeal allowed.

APPEARANCES: *G. Dare* (*Coward, Chance & Co.*); *J. P. Ashworth* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1364**

ROAD TRAFFIC: WHETHER COMPANY GUILTY OF "PERMITTING" SERVANT TO COMMIT OFFENCE

James & Son, Ltd. *v.* Smee. Green *v.* Burnett

Lord Goddard, C.J., Cassels, Lynskey, Slade and Parker, JJ.
22nd October, 1954

JAMES & SON, LTD. v. SMEE

Case stated by Kent justices sitting at Bromley.

A limited company was charged with "permitting" a motor vehicle and trailer to be used on a road with a defective braking system contrary to regs. 75 and 101 of the Motor Vehicles (Construction and Use) Regulations, 1951. The justices found that the defect in the braking system was solely due to the fault of the company's servants, but that the failure by their servants to connect the braking system properly was, in the circumstances, a failure by the company to take all proper steps to prevent the use of the vehicles in the condition alleged, and they convicted the company. The company appealed.

GREEN v. BURNETT

Case stated by Wakefield justices sitting at Lower Agbrigg.

A limited company was charged with "using" a motor vehicle with a defective braking system, contrary to regs. 75 and 101. The justices found that the defect in the brakes arose from circumstances over which the company had no control and they dismissed the information. The prosecutor appealed. Regulation 101 of the Motor Vehicles (Construction and Use) Regulations, 1951, provides that: "If any person uses or causes or permits to be used on any road a motor vehicle or trailer in contravention of or fails to comply with any of the preceding regulations," he shall for each offence be liable to a fine.

PARKER, J., reading the majority judgment of the court (Lord Goddard, C.J., Cassels, Lynskey and Parker, JJ.) in *James & Son, Ltd.* v. *Smee*, said that it was clear that while the driver of a vehicle used it on the road within the meaning of reg. 101, so also, if he was a servant, did his master, whether that master was a private individual or a limited company, provided that the servant was driving on his master's business. It was also clear that the prohibition against user in contravention of reg. 75 was an absolute prohibition in the sense that no *mens rea* apart from user need be shown to constitute the offence. The company were, however, charged with permitting the use in contravention of the regulation, which at once imported a state of mind. Knowledge in that connection included the state of mind of a man who shut his eyes to the obvious, or allowed his servant to do something in circumstances where a contravention was likely, not caring whether a contravention took place or not. In the present case, there was no evidence that the company, by any responsible officer, permitted in any sense the user by the driver in contravention of the regulation. It was urged that the fact that the company were a limited company imported different considerations, and that in the case of a limited company that knowledge could be inferred. Their lordships were unable to see how different considerations could apply to a limited company. It was said that, by committing the offence of user, the driver at the same time made his master guilty of the offence of permitting such user. In their lordships' opinion that contention was highly artificial and divorced from reality. They preferred the view that, before a company could be held guilty of permitting a user in contravention of the regulation, it must be proved that some person for whose criminal act the company was responsible permitted as opposed to committed the offence. There was no such evidence in the present case. In their view, therefore, the appeal should be allowed albeit on the ground that the appellants would have had no answer if charged with using the vehicles in contravention of the regulations.

LORD GODDARD, C.J., reading the judgment of the court in *Green* v. *Burnett*, said that the regulations laid down an absolute prohibition against user in contravention of the regulations; accordingly, the offence was clearly proved.

SLADE, J., said that he was unable to agree that a distinction could be drawn between using and permitting to be used where the person charged was a company, and the liability sought to be imposed was vicarious liability of the company for the breach of an absolute prohibition by its servant while acting within the general scope of his employment. He was of the opinion that the word "uses" meant, in the case of a body corporate, "permits to be used," and, accordingly, that if the word "uses" carried an absolute prohibition so also did the expression "permits to be used." He was therefore of the opinion that in each appeal the company should be convicted.

Appeals allowed.

APPEARANCES: *Norman Skelhorn*, Q.C., and *C. D. Brandreth* (*Hugh-Jones & Co.*); *Paul Wrightson* (*Solicitor, Metropolitan Police*); *F. P. Neill* (*Cummings, Marchant & Ashton*, for *R. C. Linney*, Wakefield).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[3 W.L.R. 631**

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Expiring Laws Continuance (No. 2) Bill [H.C.] [4th November.

Overseas Resources Development Bill [H.C.] [1st November.

Read Second Time :—

Bank of Scotland Order Confirmation Bill [H.C.] [1st November.

Town and Country Planning (Scotland) Bill [H.C.] [4th November.

Read Third Time :—

Electricity Reorganisation (Scotland) Bill [H.C.] [2nd November.

In Committee :—

Town and Country Planning Bill [H.C.] [2nd November.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

Lotteries Bill [H.C.] [3rd November.

To authorise the conduct on behalf of societies registered with the local authority of small lotteries for raising money for charitable, sporting and other purposes.

Read Second Time :—

Pharmacy Bill [H.L.] [5th November.

Post Office Savings Banks Bill [H.L.] [5th November.

Trustee Savings Banks Bill [H.L.] [5th November.

In Committee :—

Civil Defence (Armed Forces) Bill [H.L.] [4th November.

Food and Drugs Amendment Bill [H.L.] [3rd November.

National Gallery and Tate Gallery Bill [H.L.] [5th November.

B. DEBATES

Lieut.-Col. MARCUS LIPTON raised the question of the decision of the Court of Appeal in the case of **Morelle, Ltd. *v.* Waterworth** and said that according to the judgment the premises in London belonging to the appellant company (and others owned by associated companies registered in Ireland) had been forfeited to the Crown. It might be awkward for the Attorney-General suddenly to find himself the owner of a derelict slum empire, but that was what had happened. When was the Attorney-General going to give practical effect to the judgment?

Sir REGINALD MANNINGHAM-BULLER said that, whatever the legal position might be, he himself must be distinguished from the Crown, and he certainly was not the owner of a "derelict slum empire." The judgment referred to had very far-reaching and unexpected implications indeed. It affected many interests other than those of the tenants of the houses concerned, and not least among those affected was the Crown. The effect of the judgment was not confined to companies registered in Ireland, nor did it extend to all companies registered in that country. The Mortmain Acts laid down that land assigned to a corporation in mortmain without a licence should be forfeited, or subject to forfeiture, to the Crown—and for this purpose a "corporation" included foreign States, foreign limited companies and chartered bodies.

There were some statutory exceptions. Companies, including "overseas companies" registered under the Companies Acts,

were excepted. Many chartered bodies were given a general licence, and the corporations within the meaning of the Mortmain Acts which were now perhaps affected were foreign States, livery companies and a few unregistered overseas bodies.

The judgment of the Court of Appeal had come to some as a surprise. Until this decision, an assignment in mortmain had been thought to be restricted to freeholds and leaseholds which were coverable as freeholds, i.e., leases for a term of years so long as to be clearly in evasion of the Acts. In fact that meant a lease of ninety-nine years or more. Now this decision had held that the Mortmain Acts applied to all leases.

Secondly, forfeiture had always been thought to be at the option of the Crown. Now, the court had held that the forfeiture was automatic. This had many obvious and serious implications. Many companies had taken short leases in good faith without a licence. Many corporations had applied in good faith for a licence after acquiring a freehold and the Crown had remitted forfeiture. If the decision was right, then the short leases were automatically vested in the Crown however *bona fide* the purchaser was, and the remissions of forfeiture in the case of the freeholds were valueless because title had already vested in the Crown and the remissions were ineffective to ground title in the petitioning purchaser.

Thirdly, in consequence of the decision, the Crown might in law be the owner of a great deal of property of which it had never heard, and in many cases the property might be short leaseholds with onerous repairing and other covenants which the Crown would not have accepted if it had had any choice in the matter. Again, a tenant who had not fulfilled his repairing obligations might now be able to avoid his liabilities by assigning to a foreign corporation towards the end of his term so that the title and the liabilities would automatically pass to the Crown.

It would thus have been desirable for this case to go to the House of Lords—but the Crown was not a party. The Mortmain Acts were never intended to be used by tenants as a weapon against wicked landlords. Their object was to keep land on the market and to prevent the creation of a monopoly in it. The Government could not force either party into the House of Lords, but it was considering the whole matter most carefully and as a matter of urgency. [1st November.

On the first reading of the **Lotteries Bill,** Mr. ANTHONY BARKER said that the Bill would enable tickets to be sold to non-members of a club. Secondly, the Bill would allow the use of the post, with one important qualification, that it would not be used for sending tickets to non-members. Thirdly, it would allow the deduction of expenses which were actually incurred in the conduct of the lottery, but that again would be subject to a qualification. The maximum sum which could be appropriated to expenses would be 5 per cent. of the proceeds. The Bill would apply only to small lotteries and the larger ones would continue to be governed by the 1934 Act. The price would be restricted to 1s. and the maximum value of a single prize to £100. The society or club would have to be registered with the local authority, and once a year would have to submit a simple return of the lotteries which had taken place within the previous year. [3rd November.

C. QUESTIONS

PRIVATE INTERNATIONAL LAW COMMITTEE (REPORT)

The ATTORNEY-GENERAL said that consultations were proceeding with other Commonwealth Governments on the First Report of the Private International Law Committee and on the recommendations made therein. He was not yet in a position to make a statement. [1st November.

LEGAL AID AND ADVICE

The ATTORNEY-GENERAL said that on such information as was at present available, it was estimated that the annual cost of bringing into operation those provisions of Pt. I of the Legal Aid and Advice Act, 1949, which related to legal advice, legal aid in the magistrates' courts and legal aid in the county courts, was respectively £470,000, £100,000 and £250,000.

The ATTORNEY-GENERAL said he was aware that some of the local committees set up under the Legal Aid and Advice Act, 1949, were refusing applications for legal aid on the ground that the proceedings would be more appropriate to the county court. He declined to make regulations requiring the local committees to grant legal aid in respect of cases of this nature to enable proceedings to be taken in the High Court pending legal aid being made available to litigants in the county courts. [1st November.

PIRATED FILM SCRIPTS (AUTHORS' REMEDIES)

Mr. PETER THORNEYCROFT said he had no reason to believe that the remedies at present available to a playwright to prevent the pirating of his works by using the basic plot of an original play without permission or payment as the script for a film production were inadequate. [1st November.

TERMINATION OF BUILDING LICENSING

Mr. NIGEL BIRCH said that, since building licences were now issued freely in nearly all areas and neither the cost of administering the control nor the inconvenience caused to architects and contractors could any longer be justified, the Government had decided to end building licensing and intended to lay an Order in Council before Parliament, proposing the revocation of Defence Regulation 56A on 10th November. The administrative savings in the Ministry of Works would be about £150,000. [2nd November.

ARMY ACT (SELECT COMMITTEE'S REPORT)

Mr. ANTONY HEAD said that he had considered the final report of the Select Committee on the Army Act and that the Government intended to bring forward legislation in the near future. [2nd November.

IMPROVEMENT GRANTS

Mr. DUNCAN SANDYS stated that in the five years between the passing of the Housing Act, 1949, and the Housing Repairs and Rents Act, 1954, improvement grants were approved for 11,873 houses. In the two months between the passing of the 1954 Act and the end of September, grants were approved for 1,626 houses. [2nd November.

TOWN PLANNING APPEALS

Mr. DUNCAN SANDYS gave the following details as to town planning appeals :—

Month	*Appeals decided*	*Appeals withdrawn*
1953 :		
January	164	79
February	184	72
March	173	112
April	147	138
May	145	93
June	184	111
July	197	107
August	217	93
September	197	140
October	205	131
November	219	138
December	187	127
1954 :		
January	212	160
February	276	153
March	350	172
April	243	104
May	259	166
June	278	116
July	270	174
August	278	125
September	299	153

The figures for appeals withdrawn included cases where the withdrawal was made at, or following, the inquiry or hearing, and cases in which it was decided that the Minister had no jurisdiction or that no permission was required for the proposed development. No separate record was kept of such cases, but they were comparatively few. [3rd November.

ESTATE DUTY VALUATION (HOUSES)

Mr. G. THOMAS and others asked the Chancellor of the Exchequer whether he was aware that the practice of levying estate duty in respect of a house owned and occupied by the deceased on the post-war value of the house caused hardship in those cases where this value could not be realised because the beneficiaries had to continue to reside in the house. Was it not the case that the trouble was caused by the district valuers

tending to attach too-inflated values to houses occupied by dependants of the deceased? There was also evidence of a very varying practice in different parts of the country and there was certainly evidence of a change of practice in the last six or nine months.

Mr. H. BROOKE said that the concession was still in force but its value had diminished and in some areas disappeared because the premium on vacant possession had diminished or disappeared. The concession had never given relief in respect of increases over the pre-war value which were not attributable to the factor of vacant possession. There had been no change of practice, and he was quite prepared to look into individual cases. [4th November.

WAR DAMAGE COMMISSION

Mr. H. BROOKE said that no date had been fixed for the winding up of the War Damage Commission. It was still paying out substantial amounts in compensation expected to total £28m. in 1954–55 and £21m. in 1955–56. [4th November.

MAGISTRATES (EXPENSES ALLOWANCES)

Major LLOYD GEORGE said that a justice of the peace might claim a lodging allowance of 37s. 6d. in London and 30s. elsewhere if his duties necessitated his obtaining overnight accommodation. He could claim the amount of his fare if he travelled by public transport, and a mileage allowance at rates which varied according to the circumstances if he used a private motor vehicle. [4th November.

SHOPS ACT (LEGISLATION)

Major LLOYD GEORGE said he regretted that he was not able to say when it would be possible to find time for a Bill to amend the Shops Act in the light of the Gowers Report. [4th November.

TRUSTEE SECURITIES

Asked by Brigadier MEDLICOTT for the appointment of a committee to consider the list of trustee securities, with a view to the scope of the list being extended, Mr. H. BROOKE said that the Government were still considering the recommendations of the Nathan Committee on Charitable Trusts on the matter. It would be premature to make any announcement or reach any decision apart from the rest of the recommendations of that committee. [4th November.

INCOME TAX (PARTNERSHIPS)

Mr. R. A. BUTLER said that the extra-statutory concession relating to certain partnership changes set out on p. 95 of the Report of the Commissioners of Inland Revenue for the year ended 31st March, 1950 (Cmd. 8103), would not be applied where successive changes of partnership occurred in future, since under the Finance Act, 1953, s. 19, the income tax cessation and commencement provisions now applied on a change in the constitution of a partnership unless all the partners claimed continuation treatment. The concession would, however, be made where appropriate in relation to cases where the first change had already taken place. [5th November.

STATUTORY INSTRUMENTS

British Transport Commission (Amendment of Pension Schemes) Regulations, 1954. (S.I. 1954 No. 1428.) 6d.
Brymbo Water Order, 1954. (S.I. 1954 No. 1420.) 5d.
Census of Production (1955) (Returns and Exempted Persons) Order, 1954. (S.I. 1954 No. 1412.)
Darwen (Repeal and Amendment of Local Enactments) Order, 1954. (S.I. 1954 No. 1432.)
Exchange Control (Payments) (Persia) Order, 1954. (S.I. 1954 No. 1426.)
General Nursing Council (Election Scheme) Rules Approval Instrument, 1954. (S.I. 1954 No. 1417.) 8d.
Hampshire River Board Area (Eels and Elvers) Order, 1954. (S.I. 1954 No. 1425.)
Housing (Review of Contributions) Order, 1954. (S.I. 1954 No. 1407.)
Imported Canned Fruit (Revocation) Order, 1954. (S.I. 1954 No. 1430.)
Jarrow (Amendment of Local Enactment) Order, 1954. (S.I. 1954 No. 1433.)
London Traffic (Prescribed Routes) (No. 21) Regulations, 1954. (S.I. 1954 No. 1437.)
National Health Service (Travelling Allowances, etc.) Amendment (No. 2) Regulations, 1954. (S.I. 1954 No. 1418.)
Nurses (Area Nurse-Training Committees) Amendment (No. 2) Order, 1954. (S.I. 1954 No. 1416.)
Probation (No. 2) Rules, 1954. (S.I. 1954 No. 1429 (L. 13).)
Rickmansworth and Uxbridge Valley Water Order, 1954. (S.I. 1954 No. 1419.)
River Purification Authority (Commencement No. 4) Order, 1954. (S.I. 1954 No. 1427 (C. 13) (S. 159).)
River Purification Authority (Commencement No. 5) Order, 1954. (S.I. 1954 No. 1431 (C. 14) (S. 160).)
Stopping up of Highways (Cheshire) (No. 4) Order, 1954. (S.I. 1954 No. 1408.)
Stopping up of Highways (Derbyshire) (No. 7) Order, 1954. (S.I. 1954 No. 1409.)
Stopping up of Highways (Shropshire) (No. 3) Order, 1954. (S.I. 1954 No. 1415.)
Stopping up of Highways (West Riding of Yorkshire) (No. 7) Order, 1954. (S.I. 1954 No. 1413.)
Stopping up of Highways (Worcestershire) (No. 6) Order, 1954. (S.I. 1954 No. 1414.)
Watermark Disease (Hertfordshire) (Amendment) Order, 1954. (S.I. 1954 No. 1411.)
Welfare Foods (Great Britain) Order, 1954. (S.I. 1954 No. 1401.) 8d.
Welfare Foods (Northern Ireland) Order, 1954. (S.I. 1954 No. 1402.) 8d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

Honours and Appointments

The Queen has approved that a knighthood be conferred upon Mr. JOHN PERCY ASHWORTH upon his appointment as a Judge of the High Court of Justice.

The Lord Chancellor has appointed Mr. BRUCE EDGAR DUTTON BRIANT, Q.C., to be county court judge of Circuit 50 (Sussex), in succession to Judge F. K. Archer, who is retiring, with effect from 10th November, 1954.

The Attorney-General has appointed Mr. P. M. O'CONNOR to be junior counsel to the Post Office at common law, in succession to Mr. Rodger Winn.

Mr. GEORGE HOOPER, deputy clerk and solicitor since 1949, has been appointed clerk and solicitor of Hayes Urban District Council in succession to Mr. A. E. Higgins, who retired on 31st October after being clerk since 1937. Mr. C. H. RAMSDEN, formerly legal assistant, Crosby, has been appointed deputy clerk of Hayes.

Mr. NORMAN MURRAY INGLEDEW, solicitor, of Cardiff, and Mr. WILLIAM EDWARD WILLIAMS, solicitor, of Llanelly, have been re-appointed chairman and vice-chairman, respectively, of the No. 5 (South Wales) Legal Aid Area Committee.

Alderman Sir JOHN HAMPDEN INSKIP, solicitor, a former Lord Mayor of Bristol, is to be made an Honorary Freeman of Bristol.

Mr. FREDERICK RICHARD JONES, senior assistant solicitor in the Town Clerk's Department, Hove, for the past eight years, has been appointed deputy clerk to the Bognor Regis Urban Council, with effect from 1st November, 1954.

Personal Notes

Mr. Bernard Richard Masser, deputy coroner for Coventry for thirty-four years, and a solicitor, has retired on medical grounds.

Mr. Sydney Vernon, solicitor, of Birmingham, has announced that he will retire from the office of Pro-Chancellor of Birmingham University at the annual meeting of the Court of Chancellors next February.

Miscellaneous

At The Law Society's Preliminary Examination held from 11th to 14th October, eight candidates out of twenty-eight were successful.

DOUBLE TAXATION: SOUTH AFRICA

A supplementary protocol amending the Double Taxation Agreement between the United Kingdom and the Union of South Africa (S.R. & O., 1947, No. 315) was signed in Pretoria on 5th November. The protocol has the effect chiefly of extending the exemption from tax of shipping and air transport profits which is provided by the original agreement. It will need the approval of the House of Commons before it can take effect in the United Kingdom. It is expressed to take effect in the United Kingdom from 6th April, 1948.

THE SOLICITORS ACTS, 1932 TO 1941

On 27th October, 1954, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon JAMES GEORGE HARDING, of No. 48 Torwood Street, Torquay, a penalty of five hundred pounds (£500), to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

On 27th October, 1954, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of NELLIE WILHELMINA SOMAN, now or lately confined in H.M. Prison, Hill Hall, Epping, Essex, be struck off the Roll of Solicitors of the Supreme Court, and that she do pay to the applicant his costs of and incidental to the application and inquiry.

On 27th October, 1954, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that KENNETH FREDERICK BROOK, of No. 10 Lincoln's Inn Fields, London, W.C.2, be suspended from practice as a solicitor for a period of two (2) years from 27th October, 1954, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 27th October, 1954, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of HORACE WILLIAM BICKLE, formerly of Flat 3, 85 Upper Church Road, Weston-super-Mare, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 27th October, 1954, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of CHARLES WALTER STURTON, of District Chambers, Cumbergate, Peterborough, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

DEVELOPMENT PLANS

BURY COUNTY BOROUGH DEVELOPMENT PLAN

On 20th October, 1954, the Minister of Housing and Local Government approved (with modifications) the above development plan. A certified copy of the plan as approved by the Minister has been deposited at the office of the Borough Engineer, Town Hall, Bury, and will be open for inspection free of charge by all persons interested between the hours of 9.30 a.m. and 5 p.m. from Monday to Friday, and between the hours of 9.30 a.m. and 11.30 a.m. on Saturdays. The plan became operative as from 30th October, 1954, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 30th October, 1954, make application to the High Court.

CITY OF WORCESTER DEVELOPMENT PLAN

On 30th October, 1954, the Minister of Housing and Local Government approved (with modifications) the above development plan. A certified copy of the plan as approved by the Minister has been deposited at The Guildhall, Worcester. The copy of the plan so deposited will be open for inspection free of charge by all persons interested between 9.30 a.m. and 5.30 p.m. on weekdays (except Saturdays), and between 9.30 a.m. and 12 noon on Saturdays. The plan became operative as from 5th November, 1954, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may within six weeks from 5th November, 1954, make application to the High Court.

OXFORDSHIRE DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for Oxfordshire. The plan, as approved, will be deposited in the County Hall, Oxford, for inspection by the public.

OBITUARY

MR. W. G. BURT

Mr. Walter George Burt, solicitor, of Eastbourne, died recently. He was admitted in 1911.

CASES REPORTED IN VOL. 98

16th October to 13th November, 1954

Lists covering all cases reported earlier this year appear in the Interim Index (to 26th June) and at p. 624, *ante* (3rd July to 28th August)

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: 102–103 Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

Annual Subscription: Inland £3 15s., Overseas £4 5s. (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).